Supreme Court, U.S.
FILED

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Docket No.________

IN THE SUPREME COURT OF
THE UNITED STATES

October 1995 term

GLENN R. WAITE,

Petitioner,

vs.

ROBERT O. HIPPE,

Et. Al.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
for the Eighth Circuit

PETITIONER'S PETITION FOR WRIT OF CERTIORARI

Glenn R. Waite,
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712
Petitioner

114 pp

Questions Presented for Review

(1) May a state actor forgo the providing of a notice which appraises individual of proceeding, permits adequate preparation to present objections, balances interests and provides an opportunity for a hearing before an impartial decision maker as required by the 14th Amendment to the U.S. Constitution because the personal representative's attorney has not yet entered his general appearance in the case?

(2) In determining whether or not the plaintiff has a liberty or property interest protected by the Due Process Clause of the 14th Amendment to the U.S. Constitution, may a federal court, in a federal civil rights action, define the plaintiff's liberty or property interest by the procedures provided or used by the state for its deprivation?

(3) May a federal court, in a civil rights action, hold that the federal court plaintiff, who appears individually, received all the process due him in a state survival action on the substance of his federal civil rights claim when he was accorded the process due him in a wrongful death action in state court when state law does not allow the federal plaintiff to be a party, individually, in any wrongful death action prior to the time the probate court determines who is entitled to the proceeds from the wrongful death action and when the civil rights cause of action transpired after the wrongful death action was dismissed and prior to the time the probate court determined who was entitled to the proceeds from the wrongful death action?

(4) In a federal civil rights action, where the moving party in a summary judgment procedure fails to foreclose the possibility that he reached an understanding with a state judge to **not** provide the non-moving party with a precise time and place of a specific judicial proceeding so that the non-moving party could have an opportunity to present his objections to the issues [whether any legal entity had been named as a defendant and whether there was another suit on filed against one defendant with substantially the same allegations] on which the case was dismissed, may a federal court enter a judgment which states that the moving party has carried its burden of showing the absence of a genuine issue as to any material fact?

(5) May a federal court in a summary judgment procedure use supporting affidavits which **do not** present facts which would be admissible under the Federal Rules of Evidence and which **do not** comply with Federal Rule of Civil Procedure 56 (e)?

List of All Parties

Petitioner:

Glenn R. Waite, representing only his own individual rights as personal representative and as sole distributee of the decedent's estate, appears only in his individual capacity. Glenn R. Waite does not appear in his fiduciary capacity or representative capacity and cannot represent the decedent's estate pursuant to Neb. Rev. Stat. section 30-2451 (Reissue 1995).

Respondents:

Robert O. Hippe, sued only in his individual capacity.

James A. Snowden, sued only in his individual capacity.

Robert P. Chaloupka, sued only in his individual capacity.

Alyce Maupin, sued only in her individual capacity.

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Citations of Official and Unofficial Reports of the Opinions and Orders in the Case by Courts and Administrative Agencies

On May 9, 1996, the U.S. Court of Appeals for the 8th Circuit entered an Order which Affirmed the decision of the U.S. District Court for the District of Nebraska.

On June 27, 1996, the U.S. Court of Appeals for the Eighth Circuit entered an Order in case No. 95-3121NEL which Denied Waite's petition for rehearing by the panel.

On July 24, 1995, the U.S. District Court for the District of Nebraska entered an Order which Denied Waite's motion to amend judgment, motion for new trial or rehearing, and motion for relief from judgment.

On June 26, 1995, the U.S. District Court for the District of Nebraska entered an Order sustaining Snowden's motion for summary judgment and entered an Order Denying Waite's motion to strike portions of Snowden's affidavit.

Concise Statement of the Basis for Jurisdiction in this Court

(i) Date the judgment or order sought to be reviewed was entered: May 9, 1996.

(ii) Date of any order respecting rehearing: June 27, 1996.

(iii) Express reliance on Rule 12.5, when a cross-petition for writ of certiorari is filed under that Rule: Not applicable.

(iv) The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question: Title 28 United States Code section 1257.

The Constitutional Provisions, Treaties, Statutes, Ordinances, and Regulations involved in the Case

Article IV, section 1, of the
U.S. Constitution

Article IV, section 2, of the
U.S. Constitution

Article I in addition to, and
amendment of, the U.S. Constitution

Article XIV in addition to, and amendment
of, the U.S. Constitution

Title 42 United States Code 1983

Neb. Rev. Stat. section 7-101 (Reissue 1991)

Neb. Rev. Stat. section 24-517 (Reissue 1995)

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Neb. Rev. Stat. section 30-2472 (Reissue 1995)

Neb. Rev. Stat. section 30-24,106 (Reissue 1995)

Concise Statement of the Case Setting out the Facts Material to Consideration of the Questions Presented

I am a physician and I well acquainted with my mother's case. Judge Kopf's statement "These lawsuits all related to Plaintiff's mother's death from terminal cancer while in the care of named individual defendants and entities" [App. of Petitioner 3] has no truth whatsoever. My mother **did not** die of terminal cancer or any other terminal illness. She was outrightly murdered by the nurses and doctors attending to her care and the defendants used state employees (nursing students and instructors from Western Nebraska Community College) to accomplish this. Judge Hippe's wife is the Director of the practical nursing school.

This case is a Title 42 U.S.C.S. 1983 action filed against Snowden, an attorney, and Hippe, a State Judge, in the United States District Court by the plaintiff claiming that the defendants acted under color of state law to deprive the plaintiff of (1) his right of access to the courts guaranteed by the U.S. Constitution under Article IV and under amendments one and fourteen and (2) his right to property (chose in action) of which he was the temporary owner pursuant to Neb. Rev. Stat. 30-2472 (Reissue 1995) and permanent owner pursuant to Neb. Rev. Stat. section 30-24,106 (Reissue 1995) without prior notice and the opportunity for a hearing before an impartial decision maker on the issues of whether or not there was any legal entity named as a defendant and whether or not there was another suit pending against Regional West Medical Center with substantially the same allegations [App. of Petitioner 2].

It is alleged that Harriet Waite died on April 17, 1989 of an intentional overdose of intravenous morphine administered to her by the nurses and doctors attending to her care knowing she had refused it. Prior to death, Harriet Waite sustained several distinct injuries [App. of Petitioner 59-60]. One injury was a failure to render appropriate professional services in the diagnosis and treatment of polymyositis (*state case 38267*). A second injury was a failure to render appropriate professional services in the diagnosis and treatment of a neurological injury, central pontine myelinolysis (state case 38268). A third injury was negligent treatment of chronic hyponatremia (state case 38279). A fourth injury was the battery negligence of administering morphine to Harriet Waite knowing she had refused the medication (state case 38270 [the property interest the plaintiff alleges he was deprived of in this Title 42 USCS 1983 action]). A fifth injury was fraud perpetrated upon Harriet Waite and on her son, Glenn R. Waite, M.D (state case 38269). There is a wrongful death action (state case 38271 and first cause of action in 38269) which is not an asset of the decedent's estate, but rather an asset of the sole next of kin [person who takes the decedent's estate under the statutes of descent] who is Glenn R. Waite as sole distributee.

An administration of the decedent's estate was commenced November 9, 1990 in the county court of Sheridan County, Nebraska [App. of Peitioner 58]. On Janaury 2, 1991, the county court appointed Glenn R. Waite as personal representative of the estate of Harriet Waite. On November 29, 1993, pursuant to Neb. Rev. Stat. sections 30-2465 and 30-24,106, the personal representative distributed the "chose(s) in action involving a claim for negligence in the care and treatment of the decedent, Harriet I.

Waite" to Glenn R. Waite, individually. On November 1, 1995,the personal representative distributed all estate assets to Glenn R. Waite, individually. On May 15, 1996, the administration of the decedent's estate ceased when the court entered its order of final settlement and distribution approving the personal representative's previous distributions of estate assets which distributed any and all estate assets to Glenn R. Waite as sole heir [App. of Petitioner 24-25].

On or about April 8, 1991, the personal representative filed six distinct lawsuits in state court [case nos. 38267, 38268, 38269, 38270, 38271, and 38279] representing the five survival actions and one wrongful death action [App. of Petitioner 59-60]. Regional West Medical Center was a named defendant in five of the six lawsuits.

The lawsuit which is the subject of this civil rights lawsuit is state case 38270 which is a survival action and **not** a wrongful death action. The two named defendants in the caption of case 38270 were "Regional West Medical Center" and "Nursing Service" rather than one defendant "Regional West Medical Center Nursing Service" as claimed by the U.S. District Court and U.S. Court of Appeals for the 8th Circuit [App. of Petitioner 61]. W. Scott Carpenter, M.D. was not a defendant in case 38270 and no motion for summary judgment was filed in the case. Defendant, Regional West Medical Center, was personally served on April 9, 1991. That defendant filed a special appearance claiming that the court had no jurisdiction over its person because the plaintiff had named a non existent entity namely "Regional West Medical Center, Nursing Service" as one of the defendants. The Court sustained the special appearance.

Following this, Regional West Medical Center then entered a general apperance by filing a "motion to strike pleadings and to dismiss" which claimed that the plaintiff was prosecuting the case in a representative capacity and not in an individual capacity. This motion was never set for a hearing and has never disposed of by the State Court in case 38270 so that an appeal could be taken to a higher court [App. of Petitioner 71]. The defendants never filed, at any time, a motion to consolidate these cases and there was never any court order which consolidated cases 38267, 38268, 38269, 38270, 38271, and 38279 one with another [App. of Petitioner 66]. On October 28, 1991, Snowden, an attorney for Regional West Medical Center, had a secret ex parte telephone conference with Judge Hippe on the issue of dismissal of the case on Snowden's claim that no legal entity had been named in the lawsuit and there was another suit on file against Regional West Medical Center with substantially the same allegations. This was distinct from the material issues presented in the Motion to Strike Pleadings and To Dismiss previously filed and not disposed of by the Court. At the time of the ex parte hearing, there had been no prior notice [App. of Petitioner 71] or the opportunity for a hearing on the issues that no legal entity had been named and there was another suit on file with substantially the same allegations against the defendant whose special appearance had previously been sustained to Waite who had entered his voluntary appearance or his attorney who had entered a general appearance for the personal representative in cases 38267, 38268, 38269, 38271, and 38279 on September 3, 1991 or his attorney who had entered a general appearance for the personal representative in cases 38267, 38268, and 38271 on October 3, 1991. Attorney Davison himself or the law firm of McNiff & Patton have never withdrawn that general appearance pursuant to local rule 17. On October 28, 1991, the only order that had been entered in case 38270 was the order sustaining defendant Regional West Medical Center's Special Appearance [App. of Petitioner 73]. After the telephone conference on October 28, 1991 between Snowden and Hippe in which they had agreed to dismiss Waite's cases without providing him with an opportunity to present his objections, Snowden sent Waite a copy of a letter addressed to Judge Hippe stating that Snowden had prepared an "order nunc pro tunc" for the Judge's signature without providing a notice of a precise time and place of a specific judicial proceeding so that Waite through his attorney could present his objections prior to the time Snowden and Hippe made a decision to dismiss state case 38270. In October 1993, Waite filed a motion to vacate the "order nunc pro tunc" on the grounds that it was entered without due process and a motion to annul the defendant's motion to dismiss on the ground that there is no pleading under Nebraska law known as a "pretrial motion to dismiss". Waite also filed an amended petition in his individual capacity in case 38270 and the Court has never dismissed that petition or rendered a judgment in favor of the plaintiff or the defendant. The defendants failed to file an answer within thirty days after the amended petition was filed. The State court overruled Waite's motion to vacate the order nunc pro tunc and motion to annul the defendant's motion to dismiss, but the order was not a final order since the state court had not disposed of the defendant's motion to strike pleadings and to dismiss and had not dismissed Waite's amended petition or had not rendered any final judgment in favor of the plaintiff or the defendants. In August 1994, Waite requested that the Judge set the pending motions including the defendant's motion to strike and to dismiss for a hearing. Judge Kortum sent a letter to Waite stating that he had reviewed the court file and it was his opinion that the case had been dismissed and that he was not going to exercise his jurisdiction to hear any of the pending motions. However, no dismissal order was ever entered which disposed of the pending motions and the plaintiff's amended petition. Waite prosecuted an appeal to the Nebraska Court of Appeals [A-94-0765]. The appeal was taken to the Judge's letter dated August 10, 1994 announcing that he was refusing jurisdiction of the issues in Waite's "petition for hearing". Waite did not appeal to any "overruling a motion for new trial" or any other order because the court has never, at any time, entered any final appealable order. After the appeal to the Judge's letter was filed in the Nebraska Court of Appeals, a copy of the "Clerk's Certification" [App. of Petitioner 69-72] was filed on September 22, 1994 and pursuant to this filing, the Nebraska Court of Appeals dismissed the appeal due to lack of jurisdiction because the District Court had not disposed of all motions in the case. It was not dismissed because the appeal had been filed 30 days after a "motion for new trial" was overruled.

On September 3, 1991, a hearing was held on defendant Carpenter's motion for summary judgment in cases 38267, 38268, 38269, 38271, and 38279, but **not** in case 38270 because **no** motion for summary judgment had been filed in that case. The state court did not hear defendant Regional West Medical Center's motion to strike pleadings and to dismiss at the September 3, 1991 hearing or at any other hearing and that motion remains pending as of this date [App. of Petitioner 69-72].

Basis for Federal Jurisdiction of the United States District Court:

Federal Question Jurisdiction and case or controversy under Title 28 United States Code section 1331 and under Title 42 United States Code section 1983.

A Direct and Concise Argument Amplifying the Reasons Relied on for Allowance of the Writ

The U.S. Court of Appeals for the Eighth Circuit concluded that no error of law or fact appears and affirmed the order by the United States District Court without an opinion of their own and therefore adopted the Opinion of the U.S. District Court [App. of Petitioner 1, 41] which stated:

> "(1) there is no evidence from which a fair and impartial jury could reasonable conclude that Snowden ever reached a "meeting of the minds" with Hippe regarding an agreement to deny Plaintiff any of his federal civil rights"; and
>
> "(2) there is no evidence from which a fair and impartial jury could reasonably conclude that the alleged unlawful agreement resulted in an actual deprivation of plaintiff's civil rights inasmuch as:
>
> (i) Plaintiff received "due process" on the substance of his claim in case number 38270 when he was accorded the process due him (if any) in cases 38269 and 38271, and /or
>
> (ii)Plaintiff's unauthorized practice

> of law made the suits he filed nullities, and the dismissal of those suits (no matter the method) could not have deprived Plaintiff of his federal civil rights since Plaintiff had no right under Nebraska law to bring the actions in the first place." [App. of Petitioner 20-21].

I. This Court Should Grant this Petition for Writ of Certiorari because there is Clearly No Decision by the Supreme Court of the United States which has Decided that a Party (an individual or fiduciary) to a Lawsuit Must First have his Attorney enter an Appearance in the Civil Action Before that Person is Entitled to an Adequate Notice which Apprises Individual of the Pending Proceeding, Permits Adequate Preparation to Present Objections, and Requires the Balancing of Interests Pursuant to the 14th Amendment of the U. S. Constitution.

The U.S. District Court decision which was affirmed by the Court of Appeals for the Eighth Circuit in this case held that the plaintiff was not deprived of his federal civil rights because he was engaged in the unauthorized practice of law (failed to have his attorney enter an appearance or sign the pleadings) and therefore had no right under Nebraska law to bring the actions in the first place. In other words, the U.S. Court of Appeals for the 8th Circuit is holding as new precedent that when a non-lawyer personal representative of a decedent's estate has not yet had his attorney enter a general appearance, the state actors do not have to provide the personal representative with an adequate notice and the opportunity for an impartial hearing before the state actors act, ex parte, to dismiss the case on a material issue not yet presented by a written pleading in the action.

This Court has defined an adequate notice as a notice which appraises the individual of the pending proceeding, permits adequate preparation to present objections, and requires a balancing of interests; Tulsa Collection Servs. v. Pope, 485 U.S. 478, 108 S.Ct. 1340, 99 L.Ed2d 565 (1988). See also, Bliek v. Palmer, 916 F. Supp. 1475 (N.D.Iowa 1996).

In Hovey v. Elliott, 167 U.S. 409 (1897), this Court held that a litigant has a right to defend in a suit and the state court cannot strike out answer and enter decree pro confesso as a punishment for contempt without due process of law. In Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 84 L.Ed2d 494, 105 S.Ct. 1487 (1985), this Court held that the state had to provide the litigant a proper notice and the opportunity for a hearing even though the litigant had lied on his application for employment. This Court in Fuentes v. Shevin, 407 U.S. 67, 32 LEd2d 556, 92 S Ct. 1983 (1972) stated that the fourteenth amendment's protection of "property" does not safeguard only the rights of undisputed ownership, but also extends protection to **any** significant property interest, including statutory entitlements.

This Court should decide whether the statutory entitlements include Neb. Rev. Stat. sections 30-2472 and 30-24,106 (Reissue 1995). Section 30-2472 gives that personal representative "power over title" before distribution and section 30-24,106 states that the distributee has title to the decedent's property after distribution. This Court should also decide whether a state actor can forego a person's right to "Due Process" because (1) the person has not first shown that he possesses "undisputed ownership" to the property right which is required before the person is entitled to appear "pro se" or (2) because the person has not yet had his attorney enter a general appearance.

The federal questions of whether "undisputed ownership" must first be proved before a person is entitled to an adequate notice which appraises individual of proceeding, permits adequate preparation to present objections, and balances interests have been decided by the U.S. Court of Appeals for the 8th Circuit in a way that conflicts with the relevant decisions of this Court. The federal question of whether a party to a lawsuit must first have his attorney enter his general appearance before that party is entitled to "due process" has not been decided by the this Court and should be decided by this Court. Therefore, this Court should grant the Petitioner's Petition for writ of certiorari.

II. This Court Should Grant the Petition for Writ of Certiorari Because it will Resolve the Federal Question of Whether a Substantive Due Process Right in Property Can be Defined by the State Procedures Provided or Used for its Deprivation and Resolve the Question of Whether a Federal Civil Rights Plaintiff Received All the Process Due him on his Civil Rights Claim When He was Provided the Process Due him in a Wrongful Death Action when the Civil Rights Cause of Action Transpired After the Wrongful Death Action was Dismissed.

The U. S. District Court and the Court of Appeals for the 8th Circuit held that Waite had no property right protected by the "Constitution and laws" of the United States in Harriet Waite's estate because "Plaintiff received "due process" on the substance of his federal claims in case number 38270 when he was accorded the process due him (if any) in cases 38269 and 38271" and/or the "Plaintiff's unauthorized practice of law made the suits he filed nullities, and the dismissal of those suits (no matter the method) could not have deprived Plaintiff of his federal civil rights since Plaintiff had no right under Nebraska law to bring the actions in the first place." [App. of Petitioner 20-21]. The federal courts held that Waite's property right protected by the U.S. Constitution was defined by the procedures or process accorded him in another lawsuit which dismissed the personal representative's petition in case 38271 prior to the time (September 5, 1991) the alleged civil rights violation occurred (October 28, 1991) on the basis that there was no genuine issue as to any material fact that the pleadings filed by the personal representative in cases 38267, 38268, & 38171 were a nullity. In other words, the federal courts held that Neb. Rev. Stat. section 7-101 (Reissue 1991) [which allows judges to enforce this provision without a proper notice and the opportunity for a hearing before a competent court to determine if the plaintiff is a party] was complied with by the state court and therefore the procedure for determining whether or not the plaintiff was engaged in the unauthorized practice of law also determined whether the plaintiff had any property right in the decedent's estate protected by the 5th and 14th Amendments to the U.S. Constitution in the state case in which the federal civil rights cause of action arose.

Under Nebraska law, the county court (not the Nebraska Court of Appeals or District Court) has exclusive original jurisdiction to determine who are the distributees of the decedent's property; Neb. Rev. Stat. sec. 24-517 (Reissue 1995).

This Court in Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 84 L.Ed2d 494, 105 S.Ct. 1487 (1985) stated that a substantive due process right in liberty or property cannot be defined by the procedures provided for its deprivation since the categories of substance and procedure provided by the due process clause of the Fourteenth Amendment are distinct. In Cleveland, supra, the District Court [470 U.S. at 536] held that because the very statute that created the property right in continued employment also specified the procedures for discharge, and because those procedures were followed, Loudermill, by definition, was afforded all the process due him. The Cleveland Board of Education [470 U.S. at 539] claimed that Loudermill had no property right under state law because he obtained his employment by lying on the application. This U.S. Supreme Court did not agree with the Cleveland Board of Education and reversed the lower court's judgment.

The U.S. Court of Appeals for the 8th Circuit and the U.S. District Court stated that Waite received all the process due him in state case 38270 when he was accorded the process due him (if any) in case 38171 (Court of Appeals case A-91-0925) [App. of Petitioner 20-21]. The Scotts Bluff County District Court did not include in its summary judgment of dismissal in case 38271 or case 38269 a ruling that Waite was not the sole heir or sole distributee of the decedent's estate. However, the Nebraska Court of Appeals in case A-91-0925 expressly concluded that Waite was not the sole heir or sole distributee of the decedent's estate; Waite v. Carpenter, et. al., 1 Neb.App. 321, 496 N.W.2d 1 at 5 (1992) and the U.S. Court of Appeals for the 8th Circuit and the U.S. District Court held that this case (A-91-0925) had preclusive effect on this issue [App. of Petitioner 19]. By holding that Nebraska Court of Appeals case A-91-0925 has preclusive effect on a matter which determines whether or not a certain person is the sole heir or sole distributee of the decedent's property (chose in action) rather than uphold the distribution of estate assets by the personal representative on November 29, 1993 pursuant to Neb. Rev. Stat. sections 30-2465, 30-24,105 and 30-24,106 turns the federal courts into a probate court. In Byers v. McAuley, 149 U.S. 608 (1893), this Court held that a federal court has no original probate jurisdiction and when property is in the actual possession of one court, of competent jurisdiction, such possession cannot be disturbed by process out of another court and an administrator appointed by a state court is an officer of that court. His possession of the decedent's property is a possession taken in obedience to the orders of that court and the jurisdiction of the federal courts is a limited one, depending upon the existence of a federal question or diverse citizenship of the parties. The court further stated that when the decedent's debts have been paid and no adjudication has been made in regard to the shares of the heirs in the estate, a federal court may make such determination when there is diversity citizenship (there is no evidence presented by the defendants that they have any beneficial interest in the decedent's estate or that the U.S. District Court has diversity jurisdiction to determine this issue). In Carey v. Brown, 92 U.S. 170, 23 L.Ed 469 (1875), this Court stated that as a general rule in suits respecting trust property brought either by or against the trustees, the cestuis que trust as well as the trustees are necessary parties. In the case, In Re Reynold's Estate, 131 Neb. 557, 268 N.W. 480 (1936), the court held that no person except beneficiary or one suing on his behalf can maintain suit against trustee to enforce trust or to enjoin or obtain redress for breach of trust. In Jaramillo v. Burkhardt, 999 F.2d 1241 (1993), the court held that a person acting in a fiduciary or representative capacity who litigates to judgment questions relating to his or her rights, duties, or liabilities in that capacity is not bound by that judgment in a proceeding with respect to his of her personal or individual rights connected with the same subject matter. In Richards v. Jefferson County Alabama, 116 S.Ct 1761 (1996), this Court held that judgment or decree among parties to lawsuit resolves issues as among them, but it does not conclude rights of strangers to those proceedings and the law does not impose upon any person absolutely entitled to hearing burden of voluntary intervention in suit to which he is stranger [App. of Petitioner 78]

A decision of whether or not there is any genuine issue as to any material fact that the pleadings filed by the personal representative are a nullity is a legal decision which only affects the personal representative who filed the cases. However, a decision of whether or not a person is the sole heir or sole distributee of the decedent's estate is a matter which affects apparent heirs in their individual capacities and if the issue is determined in a wrongful death action (on appeal) the apparent heirs are strangers to a wrongfu death action and have no vested right in the proceeds of the action until a subsequen determination by the county court as to wh is to receive the proceeds from the wrongfu death action; Hickman v. Southwest Dair Suppliers, Inc., 194 Neb.17, 230 N.W.2d 9

(1975). Under Nebraska law, the Personal Representative of a decedent's estate only represents the successors in interest in regard to their beneficial interests in the estate as trustee, but does not have any authority to represent the individual property rights of the decedent's heirs in any proceeding which determines whether a certain person is or is not the decedent's sole heir; Neb. Rev. Stat. section 30-2476 (Reissue 1995).

In this federal civil rights lawsuit, Glenn R. Waite appears only in his individual capacity whereas in Waite v. Carpenter, supra, he appeared only in his fiduciary capacity with his attorney in regard to the issue of whether or not there was any genuine issue as to any material fact that the pleadings filed by the personal representative were a nullity and no apparent heirs were made parties in their individual capacities nor did the Nebraska Court of Appeals have any subject-matter jurisdiction to determine matters which are the original exclusive jurisdiction of the county court under Nebraska law.

The decision by the U.S. Court of Appeals for the 8th Circuit in this case which affirmed the District Court's judgment that Waite received all the process due him in cases 38269/38171 on the substance of his federal civil rights claim decided this important federal question [whether the substantive due process right in liberty or property can be defined by the procedures provided for its deprivation] in a way that conflicts with relevant decisions of this Court. Therefore this Court should grant the Petitioner's Petition for a writ of certiorari to resolve this federal question.

III. This Court Should Grant the Petition for Writ of Certiorari Because it will Resolve the Question of Whether a Moving Party in a Summary Judgment Procedure (where a conspiracy has been alleged) Carries his Initial Burden of Showing the Absence of a Genuine Issue as to any Material Fact where the Moving Party Fails to Foreclose the Possibility that he Reached an Understanding with a State Official to Deny the Nonmoving Party of a Right Guaranteed by the Constitution of the United States.

The U. S. District Court and the U.S. Court of Appeals for the 8th Circuit in this case held that there is no evidence from which a fair and impartial jury could reasonably conclude that Snowden ever reached a "meeting of the minds" with Hippe regarding an agreement to deny Plaintiff any of his federal civil rights. The federal courts stated: "Simply put, it is absurd to assume that Snowden, had he actually reached a "meeting of the minds" with Hippe to deny Plaintiff his civil rights, would have sent Plaintiff (and his lawyer) a letter on the very date of the unlawful agreement (a) notifying Plaintiff of the telephone conference between Snowden and Judge Hippe (wherein the unlawful agreement was allegedly reached); and (b) notifying Plaintiff that an order had been prepared for the judge's signature (which allegedly implemented the unlawful agreement)" [App. of Petitioner 17]. The U. S. Court of Appeals in affirming the lower court decision held that Snowden's letter provided clear and unmistaken proof that there was absolutely no "meeting of the minds" by Snowden and Judge Hippe to deprive Waite of his federal right to (1) a notice which would provide Waite with a precise time and place of a specific judicial proceeding and (2) an opportunity to present his objections before an impartial decision maker on the issues contained in the "order nunc pro tunc" **before** the case was dismissed, sua sponte, on October 30, 1991.

If this case were permitted to go to a jury, it could be argued before the jury that attorney Snowden and Judge Hippe went to law school and are quite knowledgeable in the law and therefore being knowledgeable in the law they could make it appear merely in form but not in substance that there was no meeting of the minds to deprive Waite of his federal rights of "due process" when in substance there was definitely a meeting of the minds to deprive Waite of his federal civil rights since (1) Snowden's letter [the product of the ex parte hearing], on its face, did not contain any notice whatsoever that would provide Waite with a precise time and place of a specific judicial proceeding and with an opportunity to present his objections before an impartial decision maker on the issues contained in the "order nunc pro tunc" and **before** the case was actually dismissed, sua sponte, on October 30, 1991; (2) there is no other evidence that Waite received due notice to dismiss the suit on the issues contained in the order nunc pro tunc; and (3) the issues contained in the "order nunc pro tunc" were different from the issues raised in one of the defendant's "special appearance" and different from one of the defendant's Motion to Strike Pleadings and To Dismiss which has not been disposed of in state case 38270. It could also be argued before the jury that in light of the fact that the noncircumstantial evidence could only come from adverse witnesses (Attorney Flower's testimony is lacking and could provide evidence on the June 28, 1991 hearing and Judge Hippe's testimony is lacking and could provide evidence on both the June 28, 1991 hearing and the October 28, 1991 telephone conference on this issue), Snowden and Judge Hippe could have had a "meeting of the minds" to **not** provide Waite with a notice of a precise time and place of a specific judicial proceeding and with an opportunity to present his objections before an impartial decision maker on the issues [whether any legal entity had been sued and whether there was another suit on file against Regional West Medical Center with substantially the same allegations] contained in the "order nunc pro tunc" **before** the case was dismissed, sua sponte, on October 30, 1991.

Obviously, the U.S. District Court and the U.S. Court of Appeals for the 8th Circuit, in this case, held, in a summary judgment procedure in a civil rights action, that the moving party **does not** have to meet his initial burden of showing the absence of a genuine issue as to any material fact by foreclosing the possibility that he reached an understanding with a state employee (Judge) to deny the nonmoving party his rights guaranteed by the U. S. Constitution. This decision conflicts with relevants decision of this Court. In Adickes v. Kress & Co., 398 U.S. 144, 26 LEd2d 142, 90 S.Ct. 1598 (1970) this Court stated that the moving party does not carry its initial burden of showing the absence of a genuine issue as to any material fact when the moving party fails to foreclose the possibility that he reached an understanding with a state employee to deny the nonmoving party a right guaranteed by the U. S. Constitution. Therefore, this Court should grant the Petitioner's Petition for Writ of Certiorari to resolve this federal question.

IV. This Court Should Grant the Petition for Writ of Certiorari Because it will Resolve the Question of Whether an Affidavit filed in Support of a Motion for Summary Judgment Must Meet the Admissible Evidence Standards of Federal Rule of Civil Procedure 56 (e) and (g) and the Federal Rules of Evidence.

The decision of the U.S. District Court and U.S. Court of Appeals for the 8th Circuit in this case overruled Waite's Motion to Strike Portions of Snowden's Affidavit and held that Snowden's affidavit did not have to meet the admissible evidence standards of the Federal Rules of Civil Procedure 56 (e) and (g) and the Federal Rules of Evidence. Paragraph 4 of Snowden's affidavit states "Mr. Waite was not represented by counsel in any of the cases" [App. of Petitioner 46]. Paragraph 11 states "I did not attend the September 3, 1991 hearing" and "I believe Mr. Waite had retained counsel for the hearing, but that attorney made it clear that he was appearing solely to assist at that particular hearing"[App. of Petitioner 48]. Paragraph 13 states "I prepared the Proposed Nunc Pro Tunc and mailed it together with the attached letter to Glenn R. Waite and his attorney Jim L. Brown on October 28, 1991" [App. of Peitioner 49]. Paragraph 16 states "Approximately October 10, 1991, I had received notice that James Brown, then a Lincoln attorney, had entered appearances for Mr. Waite and filed Notices of Appeal in three of these cases." [App. pf Petitioner 49-50].

In Walling v. Fairmont Creamery Co., 139 F.2d 318 (1943), the Court stated that it is mandatory upon the affiant to state matters personally known to affiant. The affidavits must not only be made on personal knowledge, but must show that affiant possesses the knowledge asserted. In Jameson v. Jameson, 176 F.2d 58 (1949), the Court stated that belief or opinion, no matter how sincere, is not equivalent to "knowledge". In G. D. Searle & Co. v. Chas. Pfizer & Co., 231 F.2d 316 (1956), the Court stated that mere expressions of Affiant's opinion and his legal conclusions are totally ineffectual and are not to be given any consideration or weight whatsoever under Rule 56 (e). In Boerner v. United States, 26 F. Supp. 769 (1939) and Turner v. Lundquist, 377 F.2d 44 (1967), the courts stated that any hearsay contained within affidavits in support for a motion for summary judgment must be disregarded.

It is obvious that the U.S. Court of Appeals for the 8th Circuit and the U.S. District decided an important federal question in a way which conflicts with the decisions of another federal court of appeals. This Court should grant the Petitioner's Petition for Writ of Certiorari because it will resolve this important federal question.

CONCLUSION

First, the U.S. Court of Appeals for the 8th Circuit affirmed the lower court decision and held that if a nonlawyer personal representative is a party in a state action or case which he filed, he is not entitled to a notice of a precise place and time of a specific hearing so that he might instruct his attorney to enter an appearance and present the personal representative's objections before the case is dismissed. There has been no decision by this Court which decided this important federal question and this Court should decide this important question.

Second, the U.S. Court of Appeals for the 8th Circuit affirmed the lower court decision and held that the proceedures provided and used by the state court defined the plaintiff's property interest protected by the U.S. Constitution. The U.S. Court of Appeals for the Eighth Circuit has Supreme Court has decided this important federal question in a way that conflicts with the relevant decisions of this U.S. Supreme Court. Therefore this Court should decide this federal question to resolve the issue.

Third, the U.S. Court of Appeals for the 8th Circuit affirmed the lower court decision and held that a moving party in civil rights action in which a conspiracy has been alleged does not have to meet his initial burden of foreclosing the possibilty that he reached an understanding with a state judge to not provide the non-moving party with a precise place and time of a specific judicial proceeding so that the non-moving party could have an opportunity to present his objections before a comeptent court. The U.S. Court of Appeals for the Eighth Circuit has decided this important federal question in a way that conflicts with the relevant decisions of this Supreme Court. Therefore, this Supreme Court should decide this question to resolve the issue.

Lastly, the U.S. Court of Appeals for the 8th Circuit affirmed the lower court decision and held that supporting affidavits which do not present facts which would be admissible under the federal rules of evidence or admissible under federal rule of civil procedure number 56 (e) may be used as evidence in support of a motion for summary judgment. Several U.S. Court of Appeals have decided this important federal question which conflicts with the decision for the U.S. Court of Appeals for the 8th Circuit.

This Court should decide this important federal question in order to resolve this important issue.

For the reasons set forth above, the Petitioner most respectively requests and prays that this most Honorable Court grant his petition for writ of certiorari.

Resectively Submitted,

Glenn R. Waite,
Petitioner
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

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UNITED STATES COURT OF APPEALS
for the eighth circuit

No. 95-3121NEL

Glenn R. Waite,
Appellant,

vs.

Robert O. Hippe; James A. Snowden; Robert P. Chaloupka; Alyce Maupin, R.N.

Appeal from the United States District Court for the District of Nebraska

OPINION

In this Title 42 U.S.C. section 1983 action, Glenn R. Waite appeals the District Court's dismissal against one defendant andthe District court's grant of summary judgment to the remaining defendant. Having carefully reviewed the record and the party's briefs, we conclude that no error of law or fact appears and that an opinion would lack precedential value. Accordingly we affirm. See 8th Circuit Rule 47B.

May 9, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GLENN R. WAITE,
Plaintiff,

vs.

ROBERT O. HIPPE, JAMES A. SNOWDEN, et. al.
Defendants.

4-CV94-365

MEMORANDUM AND ORDER

Pending before this court is Defendant Snowden's motion for summary judgment

(Filing 25). Also pending before me are various motions which are related to the motion for summary judgment. For the reasons fully expressed below I will grant Defendant's motion and will dismiss this case with prejudice. I will also resolve the related motions.

I. BACKGROUND

This is an action brought pursuant to 42 U.S.C. 1983 in which Plaintiff who proceeds pro se, alleges Defendant Snowden, a lawyer, conspired with Robert Hippe, District Judge for the District Court of Scotts Bluff County, Nebraska, to deprive Plaintiff of his federal civil rights regarding a lawsuit pending before Hippe which was defended by Snowden.

All other claims and defendants were earlier dismissed by Judge Shannan when this case was assigned to him. (filing 17).

Judge hippe was previously dismissed from this action for the reason he is entitled to judicial immunity from civil damages or any acts taken in his judicial capacity (Filings 3, 9 and 17).

Essentially, Plaintiff claims that Snowden and Hippe had an ex parte conference and as a result of that ex parte conference Hippe, at Snowden's request, dismissed a case that Plaintiff had filed in state court thereby depriving Plaintiff of a property right (the cause of action) without due process of law. This activity, according to Plaintiff. constitutes a conspiracy to deprive Plaintiff of his civil rights under 42 U.S.C. 1983.

Both parties have filed lengthy affidavits (Snowden Affidavit, filing 26; Waite affidavit, filing 31) which describe the convoluted procedural history of Plaintiff's attempt to litigate six wrongful death action for medical negligence as personal representative of his mother's estate. Although there are only a very few material facts and they are not in dispute, a general summary of the subsidiary facts is helpful.

In 1991 Plaintiff filed various lawsuits in the District Court of Scotts Bluff County in his capacity as personal representative of his mother's estate against various defendants, including Regional West Medical Center, its employees and physicians in the Scotts Bluff, Nebraska area. These lawsuits all related to Plaitniff's mother's death from terminal cancer while in the care of the named individual defendants and entities.

These lawsuits (including one which did not involve the hospital) were docketed as cases 38267, 38268, 38269, 38270, 38271and 38279. (Snowden Affidavit "Snowden", 3, 4). Some of the cases were assigned to Judge Kortum, and others, including 38269 and 38270, were assigned to Judge Hippe. (Snowden 5). The Regional West Medical Center was named as a defendant in four of the suits, and in case number 38270 "Regional West Medical Center, Nursing Service" was named as a defendant.(Snowden 3).

All of the five cases related to the hospital raised essentially the same issue: whethr Ms. Waite received the proper medical care while at the hospital. (e.g., Snowden, ExA (amended complaint in cases 38269 and 38271); Ex. Y (amended complaint case 38267); Ex. Z (amended complaint 38268); Ex. AA (amended complaint in 38271); Ex. BB (amended complaint in case 38270). Of these five cases, three (cases 38267, 38268, and 38271) were assigned to Judge Kortum, and two (cases 38269 and 38270) were assigned to

Judge Hippe. (Snowden 5 and Ex. M (Memorandum Decision summarizing the filing dates, judge assignments, and procedural history)). Case number 38279 did not implicate the hospital. (Snowden 4).

Snowden, who is a lawyer, represented the Regional West Medical Center along with local counsel. (Snowden 1-2). Plaintiff is a medical doctor. (Waite Affidavit (Waite) 1).

Plaintiff is not a lawyer licensed to practice law in the State of Nebraska. (Waite 1-3); Snowden 9, Exs. C and D (including the evidentiary hearing Exhibit 1, which is the Executive Director of the Nebraska Bar Association)).

Case number 38270 was brought by Plaintiff against "Regional West Medical Center Nursing Service." (Waite, Ex. 10 (Filed April 8, 1991) Plaintiff admits that "At no time did my employed attorneys file an appearance in case number 38270." (Waite 3.)

In the complaint that began case 38270 Plaintiff, as "personal representative of Harriet I. Waite, deceased" claimed that Regional West Medical Center Nursing Service by Jane Doe, R.N. committed a "battery" while providing care to Ms. Waite when she was in the hospital and the complaint requested "damages for the benefit of the next of kin". (Waite; Ex. 10 (filed April 8, 1991). Essentially the "battery" allegedly involved the administration of a pain killer (morphine) on April 14, 1989 when Ms. Waite had refused the medication. (Id.) Plaintiff personally signed the complaint: "Glenn R. Waite". (Id.)

On May 14, 1991, an amended complaint was filed in Case number 38270 which was to the first complaint, and in this complaint Plaintiff specifically alleged that the action was brought by Plaintiff as the"personal Representative of the estate of Harriet I. Waite". (Waite Ex. 10 (Filed May 16, 1991)). Once again, Plaintiff personally signed the complaint. (Id.) The "battery" allegation was the same. (Id.) "Battery allegations were also made in cases 38269 and 38271 (Snwoden, Ex. A 12, 20; Ex. AA 19-20). Indeed, the battery allegations in these other cases were vertially identical to the "battery" allegations made in case 38270. (Compare, Snowden, Ex. A 12, 20: Ex. AA 19-20 with Snowden, Ex. BB 4; Waite, Ex. 10).

On July 3, 1991 Judge Hippe sustained a special appearance in case 38270 on the grounds that there was no such entity as "Regional West Medical Center Nursing Service." (Snowden 3, 7). The "Journal Entry" indicated that a "hearing was held with Glenn R. Waite appearing on behalf of himslef and Rhonda Flower appearing for the Defendant." (Waite; Ex. 10 (Journal Entry filed July 3, 1991). The "Jounral Entry" stated that the "Court, having reviewed the Affidavit of Alyce Maupin and considering the comments of Plaintiff and Defendant's counsel, finds that the Defendant's Special Appearance should be sustained." (Id.)

Soon thereafter it occurred to Snowden that plaintiff, as a non-lawyer, was engaged in the unauthorized practice of law. Snowden believed that the Plaintiff was attempting to bring these lawsuits for the Estate while also in effect serving as the lawyer for the Estate and its heirs contrary

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She was an employee of Regional West Medical Center and she swore that Regional West Medical Center Nursing Service was not a separate entity but was rather a department within the hospital. (Id. (Affidavit filed June 26, 1991)).

to Neb. Rev. Stat 7-101 (Reissue 1991). (Snowden 8).Thus, the motion pertained to cases 38267, 38268, 38269, 38270 and 38271. (Snowden 9). The motions to dismiss in Judge Hippe's cases were set for telephone hearing before Judge Hippe on August 9, 1991. (Snowden 10).

When Plaintiff did not appear by telephone the motions filed in all the cases were set for hearing in open court before both Judges Kortum and Hippe on September 3, 1991. (Snowden 10). Plaintiff appeared at the September 3, 1991 hearing along with a lawyer who had been retained to assist Plaintiff during the hearing, but who did not otherwise enter an appearance as counsel of record. (Snowden 11; Waite 9).

On September 9, 1991 Snowden received an order from Judge Kortum sustaining his unauthorized practice of law motion and dismissing cases 38267, 38268 and 38271. On September 27, 1991 Snowden received an order

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Neb. Rev. Stat 7-101 states in relevant part:

> Except as provided in section 7-101.01, no person shall practie as an attorney or counselor at law, or commence, conduct or defend any action or proceeding to which he is not a party, either by using or subscribing his own name, or the name of another person, or by drawing pleadings or other papers to be signed and filed by a party, in any courtof record of thsi state, unless he has been previously admitted to the bar by order of the Supreme Court of this state...It is hereby made the duty of the judges of such courts to enforce this prohibition. Any person who shall violate any of the prohibitions of this section shall be guilty of a Class III misdemeanor...

from Judge Hippe sustaining his unauthorized practice of law motion and dismissing case 38269. Snowden did not receive an order didmidding case 38270 although his motion had included this case. (Snowden 12).

On October 28, 1991, Snowden contacted the Clerk of the District Court for Scotts Bluff County, Nebraska and inquired about the absence of an order in case 38270. (Snowden 13). The Clerk could not answer Snowden's question so the Clerk connected Snowden with Judge Hippe. (Snowden 13).

According to Snowden, Judge Hippe told Snowden that an order had not been entered in 38270 because the Judge considered 38270 to have already been disposed of by virtue of the ruling of the special appearance filed earlier. (Snowden 13). When Snowden suggested that case 38270 could still be considered to be a pending case even though the special appearance had been sustained as to the only defendant, Judge Hippe directed Snowden to prepare an order "Nunc Pro Tunc" to clarify Judge Hippe's intention; that is, that Hippe intended to dismiss the case because the defendant named in the suit was not a legal entity and because other cases were pending in which substantially the same issues were presented. (Snowden 13). The Order Nunc Pro Tunc is attached to Snowden's affidavit as Exhibit E, and the order clarifies that it was Judge Hippe's intention to dismiss case 38270 for the reason there is no entity known as "Regional West Medical Center Nursing Service" and because "another suit on file against Regional West Medical Center contains substantially the same allegations." (See also Waite, Ex 10. (Order Nunc Pro Tunc dated October 30, 1991). The Order Nunc Pro Tunc did not purport to dismiss the case with prejudice to refiling. (Id.)

The order states in pertinent part the following:

> For the purpose of clarifying the record the Court hereby supplements and amends its previous Journal Entry on or about June 28, 1991, regarding the special appearance on behalf of the purported defendants.
>
> The special appearance is sustained as previously ordered and thecase is hereby dismissed for the reason that the evidence adduced establishes that there is no such legel entity as "Regional West Medical Center Nursing Service" and another suit on file against Regional West Medical Center contains substantially the same allegations. (Id.)

Snowden claims, and his transmittal letter to Judge Hippe of October 28, 1991. suggests, that he served a copy of the purpcsed order on Plaintiff and on the lawyer Plaintiff had retained to assist him at the September 3, 1991 hearing. (Snowden 13 and Exs. E and F.) Plaintiff denies receiving a copy of the order Nunc Pro Tunc from Snowden, but Snowden never had any indication that the copies he served were not received. (Snowden 15; Waite 6). Plaintiff does acknowledge, however, receiving Snowden's transmittal letter to Judge Hippe at or about the time Snowden mailed it. (Filing 37, Snowden Supp. Aff., Ex. EE (Letter dated May 5, 1992 fom Plaintiff to Assistant Counsel for Discipline stating in part "Prior to receiving a letter from Attorney James Snowden postmarked Oct. 28, 1991, I had no knowledge of any 'ex parte' communication or any 'Order Nunc Pro Tunc'."); Snowden 14).

The letter to Judge Hippe stated in part: "In accordance with our recent telephone conversation I am enclosing herewith an Order Nunc Pro Tunc which supplements and clarifies the Court's ruling on the special appearance dated June 28, 1991. I trust that this clarifies the status of the case for all concerned." (Snowden, Ex. F) The letter indicates that copies were sent to Plaintiff and the lawyer who appeared for Plaintiff at the hearing on Snowden's motion to dismiss (and who later represented Plaintiff on appeal). (Id.) The "order Nunc Pro Tunc" was signed by Judge Hippe and filed on October 30, 1991. (Waite, Ex. 10 (Order Nunc Pro Tunc dated October 30, 1991).

On October 10, 1991 the lawyer who had appeared with Plaintiff at the hearing on Snowden's motions to dismiss appealed form the dismissal of cases 38267, 38268, and 38271. (Snowden 17 and Ex. M (Memorandum Decision summarizing the filing dates, judge assignments, and procedural history)). Although Snowden had sent the lawyer for Plaitniff who was handling the appeal a copy of the Nunc Pro Tunc Order so he could appeal case 38270 if he wished (Snowden 16), case number 38270 was not included in the appeal.(Snowden 17 and Ex. M (Memorandum Decision summarizing the filing dates, judge assignments, and procedural history)).

The appeals were consolidated and on October 27, 1992 the Nebraska Court of Appeals held Plaintiff Waite had engaged in the unauthorized practice of law and that the dismissal of the cases by the District Court of Scotts Bluff County had been the appropriate course of action because of the "flagrant" and "persistent" conduct of Plaintiff which "unnecessarily vexed" defendants "with duplicate lawsuits". Waite v. Carpenter,1 Neb. App. 321, 331, 496 N.W.2d 1, 7 (1992). Essentially, the Nebraska court ruled that as a nonlawyer personal representative of an estate Plaintiff engaged in the unauthorized practice of law when he filed pleadings in the various wrongful death actions brought on behalf of the estate as the pleadings were not signed by a lawyer but rather were drafted and signed by Plaintiff, a nonlawyer.

In October 1993 Plaintiff filed motions to vacate the orders dismissing all the cases filed in the District Court of Scotts Bluff County, Nebraska. (Snowden 20). A hearing was held on October 29, 1993 on Plaintiff's motion to vacate the order Nunc Pro Tunc in case 38270. (snowden 21). On December 13, 1993 Judge Hippe denied the motion to vacate. (Snowden 22). Plaintiff filed a motion for new trial in case 38270. (Snowden 23).

On January 7, 1994, during a telephone conference, Judge hippe advised the parties he would be reassigning the case 38270 to Judge Kortum in view of Plaintiff's recent (November 2, 1993) allegations that Judge Hippe had a "pecuniary interest" in the litigation involving the hospital. (Snowden 21-24.). Plaintiff claimed that the judge's wife was employed at Regional West Medical Center during the time Plaintiff's cases were pending, but he did not claim that Hippe's wife was in any way involved with the suits. (Waite 10).

On Febraury 1, 1994 Judge Kortum held a hearing on Plaintiff's motion for new trial pertaining to the overruling of the Order Nunc Pro Tunc. (Snowden 25). Judge Kortum denied the motion for new trial on March 1, 1994. (Snowden 21-25; Ex. P). Plaintiff appealed the overruling on his motion for new trial on his motion to vacate in case 38270 on August 15, 1994 (Snowden 26, Ex. Q), but the Nebraska Court of Appeals dismissed case 38270 on its own motion on October 3, 1994. (Snowden 28, Ex. T). Plaintiff attempted to appeal further to the Nebraska Supreme Court, but his petition for further review was denied November 30, 1994. (Snowden 28, Ex. U.).

In May 1994 Plaintiff filed suit in the United States District Court for the District of Wyoming naming Snowden as a defendant in that litigtion and raising the same claims raised in this current suit. (Snowden 33). Snowden filed a motion to dismiss for lack of personal jurisdiction. (Snowden 33; Waite 11). Plaintiff dismissed the Woming litigation and re-filed this suit against Snowden in Nebraska. (Waite, Exs. 24 and 25).

Regarding the probate proceeding involving the Estate of Harriet I. Waite, on January 5, 1994, the County Court of Sheridan County determined that the Harriet I. Waite's heirs at law at the time of her death (April 17, 1989) included Plaintiff (decedent's son, two daughters and a spouse. (Snowden Affidavit, Ex. J; Waite, Ex. 1 (Decree -- Determination of heirship & Succession, dated January 5, 1994)). The probate records reveal that before there had been a determination of heirship by the probate court, on September 27, 1993 and on October 12, 1993, each of the heirs of the decedent, save for the plaintiff, renounced their interest in the Estate of Harriet I. Waite. (Waite, Ex. 1 (Renunciations)). At the same time, these heirs also executed "assignments" to Plaintiff, in his individual capacity, of their rights regarding "any and all causes of action" against the defendants, including the hospital, named in the litigation in the District Court of Scotts Bluff County. (Id.) there is no evidence that the probate court has determined that these documents are effective.

This litigation against Snowden in federal court was filed in Plaintiff's personal capacity only (Filing 6, amended complaint 1.)

II. DISCUSSION

I first consider the motion for summary judgment and I then consider the related motions.

A. Summary judgment motion

There are two elements to a conspiracy under 42 U.S. C. 1983 which must be proved by the plaintiff in order to recover, and those are: (1) an agreement between two or more persons to deprive plaintiff of his or her federal civil rights (involving at least on "stte actor" acting "under color of state law"); and (2) which agreement results in an actual deprivation of plaintiff's federl civil rights. Dixon v. City of Lawton, 898 F.2d 1443, 1449 & n.6 (10th Cir. 1990. in this regard, "pleading and proof of one without the other will be insufficient." Id.

I find and conclude that there are no material facts in dispute which would create a genuine issue for trial regarding the foregoing elements. In this case Plaintiff would have the burden of proof at trial on these two elements. While it is not the job of this court at this stage to weigh the evidence, since the Plaintiff would have the burden of proof on these elements at trial, and his response to the motion for summary judgment is insufficient to create a jury issue on either element, summary judgment is appropriate. Nelson v. City of McGehee, 876 F.2d 56, 59 (8th Cir. 1989) (affirming grant of summary judgment in 42 U.S.C. 1983 conspiracy case). See also Snelling v. Westhoff, 972 F.2d 199, 200 (1992) cert. denied 113 S.Ct. 977 (1993) (conspiracy claim under 42 U.S.C. 1983 requires allegations of specific facts). First, there is no evidence from which a fair and impartial jury could reasonably conclude that Snowden ever reached a "meeting of the minds" with Hippe regarding an agreement to deny Plaintiff any of his civil rights. Without such evidence Plaintiff cannot prove the first element of his claim. The Plaintiff must present more than speculative assertions about a "meeting of the minds" in order to avoid summary judgment:

> To create a genuine issue of conspiracy, Nelson had to point to at least some facts which would suggest that appellees "reached an understanding" to violate [his] rights. Myers v. Morris, 810 F.2d 1437, 1454 (8th Cir.) Myers), cert. denied, ---U.S.---,108 S.Ct. 97, 98 LEd2d 58 (1987). See also Adickes v. S. H. Kress & Co., 398 U.S. 144, 153, 90 S.Ct. 1598, 1606, 36 L>Ed2d 142 (1970). The Myers court also noted that in Deck v. Leftridge, 771 F.2d 1168. 1170 (8th cir.1985z) (citations omitted) this circuit held that "allegations of a conspiracy must be pleaded with sufficient specificity and factual support to suggest a meeting of the minds" [sic] directed toward an unconstitutional action." 810 F.2d at 1454. Moreover, while the judge's function is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial, there is no issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party. Anderson, 477 U.S. at 249, 106 S.Ct. at 2510-11; Cities Service, 391 U.S. at 288-89, 88 S.Ct. at 1592-93. Where the non-moving party has the burden of proof at trial on the fact in issue, as in the instant case, and fails to make a sufficient showing to establish an essential element of that party's case, entry of summary judgment is mandated. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548,

> 2552-53, 91 L.Ed2d 265 (1986). Here, while it is true that appellees have the burden of proof of showing that there is no genuine issue of material fact, this in no way relieved Nelson of his own burden of producing, in respons to appellees' motion for summary judgment, evidence that would support a jury verdict. Nelson cannot and will not be allowed to discharge his burden by not offering evidence tending to support his conclusory allegations of a conspiracy.

Nelson, 87G F.2d at 59.

The evidence establishes that (a) Snowden talked to Hippe outside of te hearing of Plaintiff about a prior ruling by Hippe which was favorable to Snowden's client when Hippe had sustained a special appearance after hearing the arguments of Plaintiff and Snowden's client; (b) as a result of that conversation Hippe signed a supplemental order prepared by Snowden which dismissed the case, with the supplemental order reciting that no proper defendant had been named (which was in fact the case); (c) the supplemental order prepared by Snowden and signed by Hippe also recited that the dismissed case was duplicative of other cases that Plaintiff had filed against Snowden's client (which was in fact the case); (d) Hippe's wife was employed by Snowden's client (but no claim is made that she was implicated in the suit); (e) Snowden represented the defendant who benefited from the dismissal; and (f) on the date of the conversation Snowden sent a letter to Hippe with a copy to Plaintiff, wherein Plaintiff was informed of the fact of the conversation and that Snowden was sending Hippe a supplemental order.

This evidence is not sufficient to establish a submissible case on whether

Snowden had a "meeting of the minds" with Hippe to deprive the plaintiff of his civil rights. It has long been the law that before a defendant can be held liable for a conspiracy, the plaintiff must prove that "at the time the defendant joined in the agreement or understanding, [he] knew the purpose of the agreement or understanding." Manual of Model Criminal Jury Instructions for the Eighth Circuit, 5.06A at 128 (1994) (element three). Specifically the defendant must be shown to have "an understanding of the unlawful nature of the plan". Id. 5.06B at 131 ("Agreement" explained).

The evidence falls far short of establishing that Snowden knew that the purpose of any agreement was to deprive Plaintiff of his civil rights. At the very most, the evidence establishes only that Snowden "agreed" with Hippe to clarify an

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I assume for purposes of resolving the summary judgment motion that the statement in the text is true, although the record is far from clear that hippe's wife was in fact employed by the hospital. In fact Snwoden asserts that he has investigated the matter and this allegation is wrong. (Filing 37, Snowden Supp. Aff. 7).

Although the Manual is used for criminal cases, the basic concepts of conspiracy liability (such as the meaning of "agreement" are equally applicable to a civil conspiracy. See e.g. 3 Edward J. Devitt, Charles B. Blackmar and Michael A. Wolff Federal Jury Pratice and Instructions--Civil, 103.23 at 1008-1010 (1987) (instruction defining conspiracy to interfere with civil rights and the existence of a conspiracy).

ambiguous prior court order.

In this connection, I especially note that there is undisputed evidence that Snowden sent Plaintiff and a lawyer representing Plaintiff a copy of Snowden's transmittal letter to Hippe representing Plaintiff a copy Snowden's transmittal letter to Hippe on the very date that Snowden spoke with Hippe. In fact Plaintiff has acknowledged receiving Snowden's transmittal letter to Judge Hippe at or about the time Snowden mailed it. (Filinq 37, Snowden Supp. Aff. Ex. EE (Letter dated May 5, 1992 from Plaintiff to Assistant Counsel for Discipline stating in part "Prior to receiving a letter from Attorney James Snowden postmarked Oct. 28, 1991, I had no knowledge of any 'ex parte' communication or any 'Order Nunc Pro Tunc'.")

In that letter Snowden confirmed for Judge Hippe and notified the Plaintiff that Snowden and Hippe had talked to one another outside the presence of Plaintiff and as a result of that conversation Snowden

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3 Edward J. Devitt, Charles B. Blackmar and Michael A. Wolff Federal Jury Practice and Insructions --Civil, 103.23 at 1009 (stating "Before the jury may find the defendant has become a member of a conspiracy, it must be shown....that the defendant who is claimed to have been a member knowingly participated in the unlawful plan with the intnt to advance or further some object or purpose of the conspiracy...[A]nd not because of mistake or...other innocent reason.") (emphasis added).

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had prepared and was sending the judge via the transmittal letter an order clarifying and supplementing the special appearance ruling. (Snowden, Ex. F).

Simply put, it is absurd to assume that Snowden, had he actually reached a "meeting of the minds" with Hippe to deny Plaintiff his civil rights, would have sent Plaintiff (and his lawyer) a letter on the very date of the unlawful agreement (a) notifying Plaintiff of the telephone conference between Snowden and Hippe (eherein the unlawful agreement was allegedly reached); (b) notifying Plaintiff that an order had been prepared for the judge's signature (which allegedly implemented the unlawful agreement).

Second,there is no evidence that would make a submissible case on the second element of Plaintiff's claim--that the alleged unlawful agreement resulted in an actual deprivation of plaintiff's rights. There are two separate and independant reasons that lead me to this finding and conclusion.

Initially, while it is true that case 38270 was dismissed as a result of Snowden's conversation with Hippe, it is equally true that Plaintiff asserted essentially the same claims in two other cases. Indeed, the "battery" allegations in cases 38269 and 38171 were virtually identical to the "battery" allegations made in case 38270. (Compare Snowden, Ex. A 12, 20; Ex. AA 19-20 with Snowden, Ex. BB 4; Waite, Ex. 10). The evidence is undisputed that Plaintiff received all the process he was due (if any) in cases 38269 and 38271 and Plaintiff makes no claim to the contrary. Because of the identical nature of the claims in these three cases, Plaintiffreceived "due process" on the substance of his claim in case number 38270 when was accorded the process due him (if any) in cases 38269 and 38271.

Moreover, Plaintiff's entire theory of recovery in this court rests on the assumption that he was entitled under Nebraska law to file these cases in the first place. If he was not entitled to file these lawsuits under Nebraska law, then it follows that there was no deprivation of Plaintiff's federal civil rights when the lawsuits were dismissed.

It is undisputed that the Nebraska courts have finally determined that Plaintiff was engaged in the unauthorized practice of law when he filed these suits. Waite v. Carpenter, 1 Neb. App. 321, 331, 496 N.W.2d 1, 7 (1992). Indeed the evidences establishes that case number 38271, containing virtually identical allegations of "battery" to the allegations contained in case 38270, was a part of the appeal resolved adversely to Plaintiff in Waite v. Carpenter. (Snowden 17 and Ex. M (Memorandum Decision summarizing the filing dates, judge assignments, and procedural history)).

The Nebraska court specifically found that Plaintiff by filing these lawsuits "tried to do that which he was legally prohibited from doing". Waite, 1 Neb. App. at 331, 496 N.W.2d 2d at 7 (emphasis added). Indeed, the court emphatically declared that unless Plaintiff fit within an exception to Neb. Rev. Stat. 7-101 (and the court found that he did not), the "statute, 7-101 prevents the filing of any paper in any action". Waite, 1 Neb. App. at 328, 496 N.W.2d at 5 (emphasis added). It follows therefore that the suits filed by Plaintiff were nullities, and the dismissal of those suits (no matter the method) could not have deprived Plaintiff of his federal civil rights since Plaintiff had no right under Nebraska law to bring the actions in the first place. Plaintiff attempts to avoid the force of this last point by contending that the Nebraska courts were simply wrong in concluding that he was engaged in the unauthorized practice of law. Plaintiff argues that he was the sole heir and thus had a right to represent himself under Nebraska law. Even if I were to ignore (which I do not) the preclusive effect Waite, see e.g. United States v. Gurley, 43 F. 3d 1188, 1198 (8th Cir 1994), Plaintiff's argument is unpersuasive.

Plaintiff was clearly engaged in the unauthorized practice of law when he filed all of these suits in state court as he was acting in his capacity as a personal representative of his mother's estate and hismother's estate had multiple heirs. As such, he was not only representing himself as an heir to his mother's estate, he also represented the other heirs to his mother's estate, which included a spouse and two other children. (Snowden Ex. J; Waite, Ex. 1 (Decree --Determination of

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Not only were these suits nullities, but the unauthorized practice of law in Nebraska is a criminal offense. Neb. Rev. Stat 7-101.

Gurley jolds that issue preclusion or "collateral estoppel" arises if: (1) the issue was identical to an issue in the prior adjudication; (2) there was a final judgment on themerits in the prior adjudication; (3) the estopped party was a party, or in privity with a party, in the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

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of Heirship & Succession, dated January 5, 1994)). While Nebraska law might allow Plaintiff to represent himself without a lawyer, Nebraska law clearly would not permit Plaintiff to represent the other heirs, Waite, 1 Neb. App. at 325-26, 496 N.W.2d at 3-4, and that is precisely what he was doing. In summary, I find and conclude that the motion for summary judgment must be granted as there are no material facts in dispute which would create a genuine issue for trial regarding both elements of Plaintiff's conspiracy claim. Specifically, I find and conclude that:

(1) there in no evidence from which a fair and impartial jury could reasonmbly conclude that Snowden ever reached a "meeting of the minds" with Hippe to deny Plaintiff any of his federalrights; and/or

(2) there is no evidence which a fair and impartial jury could reasonably conclude that the alleged unlawful agreement resulted in an actual deprivation of plaintiff's civil rights inasmuch as:

Plaintiff also argues that because the other heirs executed renunciations and assignments to him that he was the sole heir. The legal validity of these documents has not been established under nebraska law so far as I can determine from the evidence. Moreover, since the decree of heirship did not recognize the renunciations it is at least questionable whether the probate court believed that the renunciations complied with Nebraska probate law. in any event, plaintiff's argument is unavailing because even if the renunciations and assignments are valid these documents were not executed until long after the cases in Scotts bluff county were dismissed. (Waite, Ex. 1). Thus, both at the time Plaintiff commenced the suits and at the time the suits were dismissed the Plaintiff as a nonlawyer was representing all the heirs at law in violation of Nebraska law.

(i) Plaintiff received "due process" on the substance of his claim in case number 38270 when he was accorded the process due him (if any) in cases 38269 and 38271, and/or

(ii) Plaintiff's unauthorized practice of law made the suits he filed nullities, and the dismissal of those suits (no matter the method) could not have deprived Plaintiff of his civil rights since Plaintiff had no right under Nebraska law to bring the actions in the first place.

B. Related Motions

All of the related motions, save for two, may be disposed of summarily. Plaintiff's motion to strike certain portions of Snowden's affidavit (Filing 28) is without merit and should be denied. Plaintiff's motion to strike statement regarding local rule 56.1 contained in defendant's brief (Filing 29) is without merit and should be denied. Plaintiff's motion for hearing and oral argument on defendant's motion for summary judgment (Filing 30) is without merit and should be denied. Plaintiff's motion to alter or amend court order of May 11, 1995 (giving Snowden leave to file supplemental evidence) (Filing 41) is without merit and should be denied.

Snowden's motion for rule 11 sanctions (Filing 32) and Plaintiff's motion for leave to submit supplemental evidence in support of objection to Snowden's motion for sanctions (Filing 40) deserve more attention. I turn to those motions next.

Snowden, having complied with Fed. R. Civ. P. 11(c)(1)(A) (requiring that a copy of the motion to served on the offending party to give that party an oppportunity to withdraw the offending pleading before the motion is filed), requests that I impose sanctions on the Plaintiff. In response to this motion, Plaintiff requests (Filing 40) leave to submit supplemental evidence. This request is granted, and I have considered the evidence.

Snowden essentially argues that Rule 11 was violated because Plaintiff endeavored to relitigate the Waite decision and that such litigation was barred by the doctrine of issue preclusion or collateral estoppel. Having carefully considered Snowden's sanctions motion, and having liberally construed the pro se complaint as I must do in cases like this, I find and conclude that Plaintiff has not violated Rule 11 and I must deny the sanctions motion. Compare, Kirkowski v. Volcker, 819 F.2d 201, 204 (8th Cir. 1987) (Liberally construing the complaint, Rule 11 sanctions were properly imposed upon pro se plaintiffs because "of previous dismissals involving the exact same parties under the same legal theories".)

Given the convuluted procedural history of these cases, I believe that Plaitniff has a plausible (although only barely plausible) argument that he was not accorded a "full" chance to be heard on the adjudicated issue and thus hewas not precluded from relitigating the unauthorized practice of law issue. Gurley, 43 F.3d at 1198 (issue preclusion requires, among other things, a finding that the estopped party was given a "full" opportunity to litigate the issue) (quoting Arkla Exploration Co. v. Texas Oil & Gas Corp., 734 F.2d 347, 356 (8th Cir. 1984), cert. denied , 469 U.S. 1158 (1985) (in turn quoting Oldham v. Pritchett, 599 F.2d 274, 279 (8th Cir 1979).

In the Waite case the court acknowledged that the Plaintiff had not offered prooof on the dispositive "sole heir" issue because Plaintiff erroneously believed that the burden of proof rested with the defendants, and not the plaintiff, to show that he was the sole heir. Waite, 1 Neb. App. at 326-27, 496 N.W.2d at 4. Indeed the court noted that it found the factual predicate for its ruling "based solely upon the allegations of Waite's various pleadings." Id. (emphasis added).

Inasmuch as Plaintiff has presented proof (albiet immaterial proof) in this case (the renunciations and assignments executed after the dismissals) that he was the sole heir, he has a plausable argument here that he was not "fully" heard in the state courts. He could plausibly argue that the state courts did not "fully" hear him inasmuch as the state court resolved the dispositive "sole heir" issue on Plaintiff's misunderstanding of the burden of proof in a summary judgment proceeding and his pro se pleadings rather than on the merits ofthe "sole heir" question. In plain words, Plaintiff could argue that he could have obtained proof that he was the "sole heir" had he known it was his burden to do so. While I reject the substance of this argument, the superficial plausibility of it saves Plaintiff (by the skin of his teeth) from Snowden's motion for sanctions.

Having denied Snowden's motion for sanctions, I observe that from the proofs presented by the parties I am convinced that Snowden's conduct was both innocent of any wrongdoing and totally consistent with relevant ethical principles. Moreover, I note there are good reasons for unauthorized practice of law statutes and Plaintiff's conduct provides a frightening example of the pressing need for vigorous enforcement of such statutes.

Accordingly.

IT IS ORDERED that:

1. Defendant's motion for summary judgment (filing 25) is granted.

2. Judgment shall be entered by separate document providing in substance that: "Judgment is entered for Defendants

and against Plaintiff providing that Plaintiff shall take nothing, and this case is dismissed with prejudice."

3. Plaintiff's motion to strike certain portions o Snowden's affidavit (Filing 28), Plaintiff's motion to strike the statement regarding local rule 56.1 contained in defendant's brief (Filing 29), Plaitniff's motion for hearing and oral argument on defendant's motion for summary judgment (Filing 30), Plaintiff's motion to alter or amend court order of May 11, 1995 (Filing 41) are denied.

4. Plaintiff's motion for leave to submit supplemental evidence (Filing 40) is granted.

5. Snowden's motion for Rule 11 sanctions (Filing 32) is denied.

DATED this 26 day of June, 1995.

BY THE COURT.

Richard G. Kopf
United States
District Judge

IN THE COUNTY COURT OF
SHERIDAN COUNTY, NEBRSKA

IN THE MATTER OF THE ESTATE OF HARRIET I. WAITE, Deceased	)))	ORDER OF COMPLETE SETTLEMENT & DISTRIBUTION

The petition of Glenn R. Waite, Personal Representative and heir of decedent, filed herein, for a formal proceeding to adjudicate the final settlement and distibution of the above estate came on for hearing this the 15th day of May 1996 and the only person appearing was Glenn R. Waite; and

It appearing to the Court that on January 5, 1994 the Court entered a decree of heirship which named Peter A. Waite, spouse; Glenn R. Waite, natural son; Doris R. Butler, natural daughter; and Beverly E. Sipple, natural daughter; as the sole and only heirs; and it is noted by the Court the Peter A. Waite, Doris R. Butler, and Beverly E. Sipple have renounced all interests in the estate assets; leaving other possible persons to take the estate by representation through the heirs who have renounced their intrests; and it appearing to the Court that Wanda Sipple Hall, Wendy Sipple, WaLinda Sipple, Michelle Warzecha, and Shannon Kadlec are granddaughters of the decedent and said persons have been notified pursuant to Neb. Rev. Stat. section 30-2220 (Cumm. Supp. 1993); and said persons have not appeared in this matter, and any other persons have been notified by publication pursuant to Nebraska law,

It is hereby ordered, adjudged, and decreed that the Court does hereby approve the petition of Glenn R. Waite forfinal settlement and does approve his previous distributions of estate assets.

Charles Plantz,
County Judge

IN THE COUNTY COURT OF
SHERIDAN COUNTY, NEBRASKA

IN THE MATTER OF)
THE ESTATE OF HARRIET) No. PR90-78
I. WAITE, Deceased)

PETITION FOR FORMAL PROCEEDING TO ADJUDICATE THE FINAL SETTLEMENT AND DISTRIBUTION OF THE ESTATE

COMES NOW, Glenn R. Waite, Personal Representative of the estate and sole distributee by informal distribution, pursuant to Neb. Rev. Stat. section 30-24,115 (Reissue 1989), and moves this Court to enter an Order adjudicating the final settlement and distribution of the estate. Glenn R. Waite moves this Court to approve settlement and direct or approve distribution of the estate and discharge the personal representative from further claim or demand of any interested person.

The decedent left absolutely no debts and there were never any claims filed or brought against the personal representative. The time for filing any claims has long ago expired.

At this time the only interested person in the estate is Glenn R. Waite. Peter A. Waite, Doris R. Butler, and Beverly E. Sipple have renounced all interests in the estate. Peter A. Waite has one other son by another marriage, and to my knowledge he is not an interested person in the estate; Doris R. Butler has two daughters and to my knowledge they are not interested persons in the estate. Beverly E. Sipple has three daughters and to my knowledge they are not interested persons in the estate.

On November 9, 1990, an application for informal appointment of personal representative in intestacy was filed. On November 9, 1990, Glenn R. Waite accepted his appointment as personal representative. On January 2, 1991, Glen Fiebig, County Judge, ordered the Clerk to issue letters of Personal Representative to Glenn R. Waite. The only estate assets were chose(s) in action involving negligence in the medical care of the decedent and chose(s) in action against attorneys who may have committed professional negligence. There is a claim for wrongful death which is not an asset of the estate, but rather an asset of the next of kin. On September 27, 1993, a renunciation of succession, affidavit and assignment were filed by Peter A. Waite. On

September 28, 1993, a renunciation of succession, affidavit and assignment were filed by Doris R. Butler. On October 18, 1993, a renunciation of succession, affidavit and assignment were filed by Beverly E. Sipple. On October 18, 1993, Glenn R. Waite filed a petition for determination of heirship and succession. On November 29, 1993, the Personal Representative distributed to himself the chose(s) in action involving a claim for negligence in the care and treatment of the decedent. On January 5, 1994, the Court adjudged that the decedent died intestate on April 17, 1989 and leaving surviving her as her sole and only heirs were Peter A. Waite, spouse; Glenn R. Waite, natural son; Doris R. Butler, natural daughter; and Beverly E. Sipple, natural daughter. On November 1, 1995, the personal representative informally distributed all estate assets to himself, individually, as the sole interested person in the estate. As informal sole distributee, Glenn R. Waite, individually, pro se, is presently prosecuting an action against Regional West Medical Center, Scottsbluff Internal Medical Group, and W. Scott Carpenter in the U.S. District Court for the District of Nebraska, case number 4:95CV-3447, involving a declaration of his individual rights and legal relation between him and the defendants as it regards cases 38270 and 38279 which were filed by the personal representative in the District Court of Scotts Bluff County and in which the Court has never rendered a final judgement which disposed of all claims and all parties. As personal representative, pro se, representating himself as the sole and only next of kin claiming wrongful death damages, Glenn R. Waite is prosecuting a motion to vacate judgment of dismissal pursuant to Neb. Rev. Stat. section 25-2001 et. seq. for irregularities and neglect of clerk which were not a result of his own neglect in case 38269 filed in the District Court of Scotts Bluff County. Glenn R. Waite's motion is still pending. As informal sole distributee, Glenn R. Waite, pro se, is prosecuting an appeal to a dismissed civil rights action against Attorney Snowden and Judge Robert Hippe in the 8th U.S. Circuit Court of Appeals, case 95-3121. Lastly, Glenn R. Waite thru his attorney is prosecuting an action against attorneys who negligently prosecuted a suit on behalf of the personal representative, this is filed in the District Court of Lancaster County, Nebraska, case Docket 502, Page 170. All of the above actions are still pending.

WHEREFORE, Glenn R. Waite moves this Court to enter an order approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person in regard to estate assets after notice to any and all interested persons.

Glenn R. Waite
Personal Representative
and sole distributee by
informal distribution
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

VERIFICATION:

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

Glenn R. Waite, first duly sworn upon his oath, makes the following statements based on personal knowledge:

I am the natural son of Harriet I. Waite. Harriet I. Waite died intestate and left no debts. I am the duly appointed personal representative by order of this Court. I am the only interested person in the estate of my mother. I have made the foregoing petition based on personal knowledge and to the best of my knowledge and belief, the facts contained in the petition are true and correct.

Glenn R. Waite

Subscribed and sworn to before me this the ___ day of March 1996.

Notary Public

IN THE COUNTY COURT OF
SHERIDAN COUNTY, NEBRASKA

IN THE MATTER OF) No. PR90-78
THE ESTATE OF HARRIET) AFFIDAVIT OF
I. WAITE, Deceased) GLENN R. WAITE

STATE OF NEBRASKA)
) ss.
COUNTY OF SHERIDAN)

Glenn R. Waite, being first duly sworn on oath, makes this Affidavit based upon personal knowledge and deposes and states as follows:

1. Affiant is the sole natural born son of Harriet I. Waite and was appointed personal representative of the above decedent on January 2, 1991. The affiant has no children. The affiant is a licensed physician in the states of Wyoming, Colorado, California, and Indiana. Affiant is Board Certified in Family Practice.

2. The sole and only assets of the above estate are:

A cause of action against Dr. William Scott Carpenter, Scottsbluff

Internal Medicine Group, and Regional West Medical Center for negligence in the diagnosis and treatment of the decdent's leg weakness manifested as polymyositis.

A cause of action against Dr. Richard Savage for negligence in the diagnosis and treatment of the decedent's leg weakness and the decedent's chronic hyponatremia leaving the decedent totally paralyzed.

A cause of action against W. Scott Carpenter, Dr. Armando Mangana, Dr. William Packard, Dr. Terry Himes, and Regional West Medical Center for negligent treatment of the decedent's clinical central pontine myelinolysis.

A cause of action against Regional West Medical Center and Nancy Adams for battery negligence of administering intravenous morphine knowing the decedent had refused the medication.

A cause of action against Dr. Carpenter and Scottsbluff Internal Medicine Group acting as internal medicine consultants when the decedent was under the care of Dr. Richard Savage.

A cause of action against attorney Jim L. Brown for legal malpractice.

and there are no other assets of the above decedent known to the affiant. Any personal effects of the decedent were distributed among the heirs after decedent's death and prior to commencing any probate proceedings.

3. There is a wrongful death action against Dr. Carpenter, Dr. Terry Himes, Dr. Larry O'Holleran, Jana L. Haick, Donna Rusen, Judy Bowlin and Regional West Medical Center as joint tortfeasors and against Dr. Carpenter and Regional West Medical Center as separate defendants. The action alleges that the defendants intentionally and maliciously caused the decedent's death. The wrongful death action is an asset of the next of kin and is being administered by this Court.

4. The following are pending actions connected with the above decedent:

Case numbers 38267, 38268, 38269, 38270, 38271, and 38279 filed in the District Court of Scotts Bluff County Nebraska. These cases are pending in regard to the individual rights of Glenn R. Waite.

Docket 502, Page 170, filed in the District Court of Lancaster County Nebraska.

Case 4:CV94-365 filed in the U.S. District Court of the District of Nebraska and is on appeal to the 8th Circuit Court of Appeals, case 95-3121NEL.

Cases 4:95CV3447 and 4:96CV3004 filed in the U.S. District Court of the District of Nebraska.

5. The causes of action for the negligence in the treatment and care of the decedent and for her wrongful death were undertaken in good faith and thoroughly investigated. The medical records were reviewed by 21 physicians besides myself. The actual value of these causes of action are unknown but estimated by some attorneys to be worth at least $200,000.

6. Affiant has personally paid for any and all expenses encountered with the administration of this estate, the court costs and litigation expenses of any and all causes of action connected with this estate or above decedent. No expenses have been paid by any other person other than Glenn R. Waite. The following is a list of the expenses:

8/25/90: check #157 for $100 to the clerk of this court for the probate proceeding.

8/25/90: check #158 to Ed Hollstein, attorney, for $250.

3/25/91: money order #43712081796 for $120 to the U.S. District Court.

4/05/91: money order #437120822268 for $205 to the Clerk of the District Court, Gering, NE.

4/10/91: money order #43712082336 for $41 to the Clerk of District Court, Gering, NE.

4/11/91: money order #43712082382 for $100 to the Sheriff Dept. Scotts Bluff County for service of summons.

6/2/91: Check #243 for $15.45 to the Sheriff's Dept. Scotts Bluff County, Nebrska for service of summons.

9/91: expenses of $959.71 to personally appear at hearing in Scotts Bluff County District Court. 9/16/91: check #298 for $320 to Attorney Alexnder Davison

9/23/91: draft check #31348 for $5000 to Dawson, Fleming, and Brown, attorneys at law.

10/14/91: check #308 for $52.25 to Lynn Pfortmiller, court reporter, Scotts Bluff County.

10/29/92: expenses to visit with attorney: motel expenses of $47.65 charged on credit card and mileage of 890 miles or 0.25 per miles or $222.50. Total of $ 270.15.

11/3/92: check #439 for $105 to Attorney William Blake.

11/7/92: check #441 for $1000 to Attorney William Blake.

1/25/93: check #460 for $300 to attorney Stanley Cohen.

7/7/93: check draft from credit union for $5000 to attorney Douglas DeLair.

12/22/93: legal newspaper expense of $24.53 to Sheridan County Star.

12/93: receipt #39899 for $22. from the clerk of this court.

1/5/94: expenses of trip to this Court for hearing - $114.50.

3/30/94: summons fee paid to Sheriff of Scotts Bluff County for $50.

5/2/94: check # 553 for $128 to clerk of the Dist. Court, Gering, NE.

5/2/94: check #554 for $128 to Clerk of the Dist. Court, Gering, NE.

5/17/94: check #561 for $128 to Clerk of Dist. Court, Gering, NE.

6/22/94: check # 570 for $30 to court reporter Lynn Pfortmiller.

6/22/94: check #571 for $208.50 to Clerk of Dist. Court, Gering, NE, for transcript.

7/13/94: check #602 for $4.79 to Clerk of Supreme Court for transcript fee.

7/13/94: check# 603 for $7 to Clerk of Supreme Court for transcript fee.

8/5/94: check #608 for $7.50 to Clerk of Dist. Court, Gering, NE for transcript fee.

8/31/94: summons fee of $25 paid ot Sheriff of Scottsbluff county.

10/28/94: summons fee of $25 to sheriff of Scotts Bluff County.

12/20/94: receipt #42436 for $22 from the clerk of this court.

3/18/96: receipt for cash of $20 from O'Brian, Huenergardt & Cook, Attorneys at law - legal expenses.

3/25/96: receipt #45809 for $22 from the clerk of this court.

4/91 to present: copy expenses related to court proceedings - $773.16.

4/91 to present: notary fees of $7.00 cash receipts.

4/91 to present: postage fees of $534.19.

TOTAL EXPENSES TO DATE: $16,119.73

7. On January 5, 1994, affiant appeared personally on behalf of himself in the hearing in which this Court determined that the only heirs of the above decedent were Peter A. Waite, spouse; Glenn R. Waite, natural son; Doris R. Butler, natural daughter; and Beverly E. Sipple, natural daughter. All heirs, except Glenn R. Waite, have renounced their interests to any and all of the decedent's assets.

8. The arrangement between the affiant and any and all heirs was that Glenn R.

Waite would pay from his own funds any and all expenses to carry forward any litigation in connection with the estate, including survival and wrongful death action, and Glenn R. Waite would receive the benefits, if any, from such litigation.

9. On November 29, 1993, the affiant, as personal representative, distributed to himself, individually,the chose in action involving a claim for negligence in the care and treatment of the above decedent.

10. On November 1, 1995, the affiant, as personal representative, distributed to himself, individually, any and all property, real or personal, wherever situated; any and all causes of action, and any other estate assets, wherever situated. The affiant, as personal representative, fully distributed the estate to the person(s) entitled. The affiant, as personal representative, fully administered the estate of the decedent by making payment, if any, settlement or other disposition of all claims, if any, which were presented, expenses of administration and estate, inheritance and other death taxes, if any, and fully distributing the estate.

11. On or about January 19, 1994, attorney James A. Snowden of Knudsen, Berkheimer, Richardson & Endacott sent a letter to Ms. Julie Krotz, County Court Magistrate. The letter was in reference to the above estate. Neither James A. Snowden **nor** any member of his law firm is an interested person in the above estate and **does not** represent any adult or minor child who are interested or potentially interested persons in the above estate.

12. Peter A. Waite has one son, Marvin Waite, by his first marriage to Mary Keethler. Marvin Waite is not a blood relative of the the above decedent and there was never any legal adoption of Marvin Waite by the above decedent. Marvin Waite is not

an interested person in the above estate.

13. Beverly Sipple has three daughters and no sons. The three daughters are Wanda Sipple Hall, 322 D. Drive, Montgomery, Al 36108; Wendy Sipple, 1685 First Ave., Apt. 22, New York, N.Y. 10128; and WaLinda Sipple, 721 W. Melrose, Apt. 303, Chicago, IL 60657. Wanda Sipple Hall, Wendy Sipple, and WaLinda Sipple have no natural or adopted children. The above individuals have indicated that they have absolutely no interest in the above decedent's estate or assets. The above individuals are not claiming any rights by representation through any other heir. The above individuals never at any time relied on Glenn R. Waite, individually or as personal representative, to represent them in court proceedings in any action connected with the above decedent. The above individuals never at any time paid or advanced any money whatsoever to provide court costs or legal expenses connected with any action brought by Glenn R. Waite and connected with the above decedent.

14. Doris Butler has two daughters and no sons. The two daughters are Michelle Warzecha, 168 Meadowlark Lane, Mellrose, MN 56352; and Shannon Kadlec, 11609 Lawrence Ave. N.W., Annandale, MN 55302. Michelle Warzecha and Shannon Kadlec had no natural or adopted children on April 17, 1989 when the decedent died. The above individuals have indicated that they have absolutely no interest in the above decedent's estate or assets. The above individuals are not claiming any rights by representation through any other heir. The above individuals never at any time relied on Glenn R. Waite, individually or as personal representative, to represent them in court proceedings in any action connected with the above decedent. The above individuals never at any time paid or advanced any money

whatsoever to provide court costs or legal expenses connected with any action brought by Glenn R. Waite and connected with the above decedent.

15. Affiant, in accordance with section 30-2220 of the Neb. Rev. Stat. (Cumm. Supp. 1993), caused a notice of the time and place of hearing regarding his petition for a formal proceeding to adjudicate the final settlement and distribution of the estate to be given to:

Beverly E. Sipple, 1326 Rodderdam Circle, Colorado Springs, CO 80907 by ordinary first class mail, postage prepaid, which was mailed from Hugo, Colorado on April 25, 1996.

Doris R. Bulter, 9177 Duckwood Trail, Woodbury, MN 55125 by ordinary first class mail, postage prepaid, which was mailed from Hugo, Colorado on April 25, 1996. Marvin A. Waite, 945 'O' St., Hamilton, GA 31811 by ordinary first class mail, postage prepaid, which which was mailed from Hugo, Colorado on April 25, 1996.

Wanda Sipple Hall, 322 D. Drive, Montgomery, Al 36108 by ordinary first class mail, postage prepaid, which which was mailed from Hugo, Colorado on April 25, 1996.

Wendy Sipple, 1685 First Ave., Apt. 22, New York, N.Y. 10128 by ordinary first class mail, postage prepaid, which was mailed from Hugo, Colorado on April 25, 1996.

WaLinda Sipple, 721 W. Melrose, Apt. 303, Chicago, IL 60657 by ordinary first class mail, postage prepaid, which which was mailed from Hugo, Colorado on April 25, 1996.

Michelle Warzecha, 168 Meadowlark Lane, Mellrose, MN 56352 by ordinary first class mail, postage prepaid, which which was mailed from Hugo, Colorado on April 25, 1996.

Shannon Kadlec, 11609 Lawrence Ave. N.W., Annandale, MN 55302 by ordinary first class mail, postage prepaid, which which was mailed from Hugo, Colorado on April 25, 1996.

16. There are no other potentially known interested persons in the above estate. Peter A. Waite died on March 13, 1995. His sole and only heirs are Marvin Waite, Beverly Sipple, Doris Butler, and Glenn R. Waite.

17. Affiant, in accordance with section 30-2220 of the Neb. Rev. Stat. (Cumm. Supp. 1993) caused a notice of the time and place of hearing regarding his petition for a formal proceeding to adjudicate the final settlement and distribution to be published in the Sheridan County Star, 209 S. Main St., Rushville, NE on from March 27, 1996 to April 10, 1996 for three consecutive weeks.

18. The above decedent died without leaving any debts and there were never any persons who filed any claims against the personal representative of the estate. There are absolutely no known creditors or potential creditors to the estate and it has been over three years since the estate was opened and the personal representative appointed.

FURTHER AFFIANT SAYETH NOT.

____
Glenn R. Waite

Subscribe and sworn to before me this the ___ day of May 1996.

____
Notary Public

IN THE COUNTY COURT OF
SHERIDAN COUNTY, NEBRASKA

IN THE MATTER OF) No. PR90-78
THE ESTATE OF HARRIET) DISTRIBUTION OF
I. WAITE, Deceased) ESTATE ASSETS

COMES NOW, Glenn R. Waite, Personal Representative of the above decedent, and hereby, pursuant to section 30-24,105 of the Neb. Rev. Stat. (Reissue 1989), assigns, tranfers and releases all interests in the following estate asset:

the chose in action involving a claim for negligence in the care and treatment of the Decedent, Harriet I. Waite,

to himself, Glenn R. Waite, individually, who is the sole heir at law under intestate succession and the sole beneficiary of the decedent's estate.

Glenn R. Waite, Personal Representative of the above decedent, being first duly sworn on oath, deposes and states the following based on personal knowledge:

Harriet I. Waite died intestate on April 17, 1989 and her only surviving spouse was Peter A. Waite, and her only surviving issue were Beverly E. Sipple, natural daughter; Doris R. Butler, natural daughter; and Glenn R. Waite, natural son. Peter A. Waite, Beverly E. Sipple, Doris R. Butler, and Glenn R. Waite are the sole and only heirs at law of the above decedent. There are no other natural or legal heirs.

All heirs, excepting Glenn R. Waite, have filed with the clerk of this court a written instrument of Renunciation of Succession, Affidavit, and Assignment. This leaves Glenn R. Waite to be the sole surviving heir at law under intestate succession.

____
Glenn R. Waite
Personal Representative
1202 West 28th St.
Cheyenne, WY 82001

STATE OF WYOMING) ss.
COUNTY OF LARAMIE)

ACKNOWLEDGMENT:

Before me personally appeared Glenn R.

Waite and he acknowledged the above document and signed the execution of the above in my presence.

Notary Public

Dated this the 29 day of November 1993.

PLAINTIFF'S EXHIBIT
NO. 1

IN THE COUNTY COURT OF
SHERIDAN COUNTY, NEBRASKA

IN THE MATTER OF	)	No. PR90-78
THE ESTATE OF HARRIET	)	DISTRIBUTION OF
I. WAITE, Deceased	)	ESTATE ASSETS

COMES NOW, Glenn R. Waite, Personal Representative of the above decedent, and hereby, pursuant to section 30-24,105 of the Neb. Rev. Stat. (Reissue 1989), assigns, tranfers and releases all interests in the following estate assets:

Any and all property, real or personal, wherever stituated; any and all causes of action, and any other estate assets, wherever situated,

to himself, Glenn R. Waite, individually, who is the sole heir at law under intestate succession and the sole beneficiary of the decedent's estate.

Glenn R. Waite, Personal Representative of the above decedent, being first duly sworn on oath, deposes and states the following based on personal knowledge:

Harriet I. Waite died intestate on April 17, 1989 and her only surviving spouse was Peter A. Waite, and her only surviving issue were Beverly E. Sipple, natural daughter; Doris R. Butler, natural daughter; and Glenn R. Waite, natural son. Peter A. Waite, Beverly E. Sipple, Doris R. Butler, and Glenn R. Waite are the sole and only heirs at law of the above decedent. There are no other natural or legal heirs or interested persons in the estate. The decedent had no debts when she died and there have never been any claims filed against the personal representative.

All heirs, excepting Glenn R. Waite, have filed with the clerk of this court a written instrument of Renunciation of Succession, Affidavit, and Assignment. This leaves Glenn R. Waite to be the sole surviving heir at law under intestate succession and sole distributee.

Glenn R. Waite
Personal Representative
1202 West 28th St.
Cheyenne, WY 82001

STATE OF WYOMING) ss.
COUNTY OF LARAMIE)

ACKNOWLEDGMENT:

Before me personally appeared Glenn R. Waite and he acknowledged the above document and signed the execution of the above in my presence.

Notary Public

Dated this the 1st day of November 1995.

UNITED STATES COURT OF APPEALS
for the eighth circuit

No. 95-3121NEL

Glenn R. Waite,	*	
Appellant,	*	Order Denying
	*	Petition for
vs.	*	Rehearing and
	*	Suggestion for
Robert O. Hippe, et. al.,	*	Rehearing
Appellees.	*	En Banc

The suggestion for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

June 27, 1996

UNITED STATES COURT OF APPEALS
for the eighth circuit

No. 95-3121NEL

Glenn R. Waite, *
Appellant, * Appeal from the
* United States
vs. * District Court
* for the District
Robert O. Hippe; James * of Nebraska
A. Snowden; Robert P. *
Chaloupka; Alyce *
Maupin, R.N. *

JUDGMENT

This appeal from the United States district court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

May 9, 1996

THE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

Article IV, section 1 of the U.S. Constitution:

> "Section 1. Full faith and Credit shall be given in each State to the Public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Article IV, section 2 of the U.S. Constitution:

> "Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Article I in addition to, and amendment of, the U.S. Constitution:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Article XIV in addition to, and amendment of, the U.S. Constitution:

> "**Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Title 42 United States Code 1983:

> "Every Person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in

> equity, or other proper proceeding for redress."

Neb. Rev. Stat. section 7-101 (Reissue 1991):

> "Except as provided in section 7-101.01, no person shall practice as an attorney or counselor at law, or commence, conduct or defend any action or proceeding to which he is not a party, either by using or subscribing his own name, or the name of another person, or by drawing pleadings or other papers to be signed and filed by a party, in any court of record of this state, unless he has been previously admitted to the bar by order of the Supreme Court of this state. No such paper shall be reccived or filed in any such action or proceeding unless the same bears the endorsement of some admitted attorney, or is drawn, signed, and presented by a party to the action or proceeding. It is hereby made the duty of the judges of such courts to enforce this prohibition. Any person who shall violate any of the prohibitions of this section shall be guilty of a Class III misdemeanor, but this section shall not apply to persons admitted to the bar under preexisting laws."

Neb. Rev. Stat. section 24-517 (Reissue 1995):

> "**24-517. Jurisdiction.** Each county court shall have the following jurisdiction:
> (1) Exclusive original jurisdiction of all matters relating to decedents' estates, including the probate of wills and the construction thereof;"

Neb. Rev. Stat. section 30-2465 (Reissue 1995):

> "A personal representative shall proceed expeditiously with the settlement and

> distribution of a decedent's estate and except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he mary invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate and its administration."

Neb. Rev. Stat. section 30-2472 (Reissue 1995):

> "Until termination of his appointment a personal representative has the same power over the title to property of the estate that an absolute owneer would have, in trust however, for the benefit of the creditors and others interested in the estate. Unless otherwise specifically ordered by the court, this power may be exercised without notice, hearing, or order of court."

Neb. Rev. Stat. section 30-24,106 (Reissue 1995):

> "Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from the personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal rpresentative may recover the assets or their value if the distribution was improper."

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GLENN R. WAITE, Plaintiff,	)	No. 8:CV94-365
vs.	)	AFFIDAVIT OF
ROBERT O. HIPPE, JAMES A. SNOWDEN, ROBERT P. CHALOUPKA, and ALYCE MAUPIN, R.N., Defendants.	)	JAMES A SNOWDEN

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

1. I am an attorney admitted to the bar of the Supreme Court of Nebraska, the United States District Court for the District of Nebraska, the United States Court of Appeals for the Eighth Circuit and the United States Supreme Court. I waos first admitted to the bar on June 27, 1972.

2. In approximately the Spring of 1991, my law firm, and myself in particular, were engaged to represent Regional West Medical Center in a number of cases filed by Glenn R. Waite as personal representative of the estate of Harriet Waite. Robert Chaloupka of Scottsbluff, Nebraska and his law firm had been engaged as co-counsel with our firm.

3. Mr. Waite had filed six closely related and somewhat overlapping lawsuits in approximately April, 1991, four of which named Regional West Medical Center and one case 38270, was brought against Regional West Medical Center Nursing Service. Review of the pleadings and medical records revealed that

Harriet Waite had passed away while a patient of Regional West Medical Center on or about April 17, 1989. Her principal attending physician had been W. Scott Carpenter, a physician practicing in Scottsbluff, Nebraska.

4. The six cases filed by Mr. Waite in the District Court for Scottsbluff County were identified as case numbers 38267, 38268, 38269, 38270, 38271 and 38279. Case number 38279 did not involve the hospital as a party. Mr. Waite was not represented by counsel in any of the cases.

5. Several preliminary motions were filed in the five cases involving tbe hospital or its department. Three of the five cases had been assigned to Judge Kortum and two cases, 38270 and 38269 were assigned to Judge Hippe.

6. Initially, efforts were made by the various defendants, through their attorneys, to "clean up" the litigation and make some semblance of sense out of it by filing preliminary motions designed to arrive at a point when Mr. Waite as personal representative would have one lawsuit containing all of the appropriate causes of action. As a result of a preliininary motion, case 38269 was consolidated by Mr. Waite with 38271 by the filing of an Amended Complaint dated May 14, 1991, a copy of which is attached hereto as Exhibit A.

7. On approximately June 28, 1991, a Special Appearance filed by Mr. Chaloupka's firm on behalf of the hospital was heard by Judge Hippe in case 38270. On about July 3, 1991, Judge Hippe sustained the Special Appearance and entered the Journal Entry attached hereto as Exhibit B.

8. Sometime during the last part of June, 1991, it occurred to me that a substantial ethical issue existed regarding

whether Mr. Waite could act in a representative capacity in bringing and pursuing this series of lawsuits and at the same time serve as his own attorney, since his is not admitted to the bar. Over the next couple of weeks, I researched the issue and became convinced that Mr. Waite's activity constituted the unauthorized practice of law, which all lawyers and judges are ethically obligated to prevent. Indeed, I was convinced that Mr. Waite's activity constituted criminal conduct under Nebraska law and that his court filings were to be regarded under the law as void and a complete nullity. I conveyed my thoughts to other defense counsel and began thinking as to how the issue should best be presented to the Court. All of the other lawyers agreed that Mr. Waite was engaged in the unauthorized practice of law.

9. On or about July 17, 1991, 1 mailed for filing a Motion to Strike Pleadings and to Dismiss, with an attached Affidavit. The Motion was captioned in all five cases where Mr. Waite had made any arguable filing pertaining to the hospital, and therefore included cases 38270, 38269, 38271, 38265 and 38267. A true and correct copy of the Motion and Affidavit in support is attached hereto an Exhibit C. Some of the other defendants raised the same issues by filing Motions for Sumnary Judgment.

10. My Motion to Strike and to Dismiss had initially been set for telephone hearing before Judge Hippe on August 9, 1991, however, Mr. Waite did not call or was not available. In view of the fact that identical motions had been filed in several cases involving two judges, Judge Kortum and Judge Hippe apparently

resolved that a joint hearing attended by both judges, and requiring the personal attendance of all counsel, should be ordered. Such a hearing was scheduled for September 3, 1991.

11. I did not attend the September 3, 1991 hearing. It was attanded by Mr. Chaloupka on behalf of the hospital. A true and correct copy of the Bill of Exceptions from such hearing is attached hereto as Exhibit D. I believe Mr. Waite bad retained counsel for the hearing, but that the attorney made it clear that he was appearing solely to assist at the particular hearing.

12. Approximately September 9, 1991, I received a copy of an order from Judge Kortum dismissing cases 38271, 38268 and 38267. Approximately September 27, 1991, I received a copy of an Order from Judge Hippe dismissing case 38269. I received no order on case 38270, although I had considered it to be included in my motion.

13. After hearing nothing further from the Court about case 38270, 1 placed a call to the office of the clerk of the District Court for Soottsbluff County, Nebraska on October 28, 1991. The purpose of the call was to ascertain why I had not received a ruling in case 38270 pertaining to the defendant's Motion to Strike Pleadings and to Dismiss. The deputy Clerk did not know the answer and suggested that I ask Judge Hippe. I was thereafter immediately connected with Judge Hippe over the telephone. My conversation with Judge Hippe was very short. Judge Hippe told me that he had not ruled on the Motion in case 38270 because the case was no longer pending. I pointed out that while a Special Appearance had been sustained that the case might still be viewed as

pending. Judge Hippe at that time mentioned to me that he had intended to dismiss case 38270 due to the fact that the defendant named in the suit was not a legal entity and because other cases were pending in which substantially the same allegations were made. Judge Hippe requested that I prepare an Order Nunc Pro Tunc to clarify his previous ruling. That same day, I prepared the Proposed Nunc Pro Tunc and mailed it together with the attached letter to Glenn R. Waite and his attorney Jim L. Brown on October 28, 1991. The Order Nunc Pro Tunc and letter are attached hereto as Exhibits E and F respectively.

14. On or about May 15, 1992, I became aware of a disciplinary complaint initiated by Mr. Waite. Thereafter, I became aware of a letter written by Glenn Waite on June 15, 1992 to the Chairman of the Committee on Inquiry, in which he states on page 3, "According to the court records, the Order was signed by Judge Hippe on October 30, 1991, and filed the same day by the Clerk of the Court. It was several days after October 30, 1991 that I knew anything about any order Nuno Pro Tunc."

15. Mr. Waite's copy of the letter sent to Judge Hippe on October 28, 1991, and his copy of the enclosed order, was never returned to our office. I never received any indication that these documents were not received by Mr. Waite and his attorney in the regular course of the United States mail.

16. Approximately October 10, 1991, I had received notice that James Brown, then a Lincoln attorney, had entered appearances for Mr. Waite and filed Notices of Appeal in three of these cases. I believe I had spoken with Mr. Brown over

the phone at about that time and was informed that he was going to be handling the malpractice litigation on behalf of Mr. Waite thereafter. Because Mr. Brown had not actually entered an appearance in case 38270, I sent a copy of the Order Nunc Pro Tunc and letter to both Mr. Brown and Mr. Waite so that they could promptly object, move to vacate, or appeal if they wished.

17. Cases 38267, 38268 and 38271 (consolidated amended petition covering 38269) were appealed to the Nebraska Court of Appeals. The other dismissals were not appealed. Oral arguments were given, the plaintiff was represented by Mr. Brown, and the decision of the Court was handed down on October 27, 1992. Waite v. Carpenter, 1 Neb. App. 321, 496 N.W.2d 1 (1992).A copy of that decision, which wasapproved for permanent publication, is attached hereto as Exhibit G.

18. In general, the Nebraska Court of Appeals found that the dismissals were appropriate and that Mr. Waite was engaged in the unauthorized practice of law. They found that the fact that he was a non-attorney personal representative was dispositive of the case, but they considered and rejected his "sole heir" argument nonetheless. The Court concluded that Mr. Waite's unauthorized practice of law was "flagrant" and "persistent". Further, the Court concluded that ". . . the heirs may well have been harmed by Mr. Waite's unskilled attempts to prosecute these actions on their behalf. Finally, the defendants were unnecessarily harmed by Mr. Waite's unskilled attempts to prosecute these actions on their behalf. Finally, the defendants were unnecessarily vexed and faced with duplicative lawsuits." (Waite Opinion, Page 13). The Court concluded

that Mr. Waite and engaged in a degree of subterfuge concerning the existence of other heirs. (Waite Opinion, Page 9). All three appeals were consolidated for argument and covered by the decision.

19. Mr. Waite sought further review by the Nebraska Supreme Court, however, his request was denied on or about November 25, 1992. A motion for rehearing was denied on February 5, 1993. Additional motions filed by Mr. Waite in the Supreme Court were overruled approximately February 19, 1993.

20. I heard nothing more from Mr. Waite until approimately October 22, 1993. At about that time, he filed Motions to Vacate the orders of dismissal in cases 38270, 38267, 36268, 38271 and case 38279 (in which Regional West Medical Center was not a party) Case 38270 and 38279 were the first to be heard upon the motions to Vacate. A copy of Mr. Waite's Motion to Vacate in case 38270 is attached hereto as Exhibit H attached to or filed with Mr. Waite's Motions to Vacate were "Renunciations of Succession" and "assignments" executed by Mr. Waite's siblings. These documents were dated on or after September 17, 1993, long after the decision of the Nebraska Court of Appeals had become final. Further, I wrote for and received on January 17, 1994, a copy of the probate file pertaining to Harriet Waite's estate. I found that Mr. Waite had sought to have himself determined to be the sole heir, but that the County Court had apparently not agreed to his request. Mr. Waite's Petition for determination of heirs as attached hereto as Exhibit 1. The Decree of the County Court determining heirship is attached hereto as Exhibit J.

21. On October 29, 1993, the Motion to Vacate the Order Nunc Pro Tunc was heard

in open court before Judge Hippe. I did not attend. The hearing was attended instead by my partner William Tannehill. Mr. Waite attended and participated fully. The Motion was taken under advisement as set forth in the Journal Entry of October 29, 1993, attached hereto as Exhibit K. After the hearing, I received a Motion for Recusal of Judge Hippe dated November 2, 1993. This was the first request by Mr. Waite that I am aware of that Judge Hippe recuse himself. Judge Hippe's wife was not mentioned in the Motion, a copy of which is attached hereto as Exhibit L.

22. On December 13, 1993, I received Judge Hippe's Memorandum Decision overruling the Motion to Vacate. A copy of that Memorandum and Order is attached hereto as Exhibit M. Judge Hippe also overruled Mr. Waite's other pending molions, including the Motion for Recusal where he stated in the last paragraph "the motions requesting further orders are all denied."

23. On December 20, 1993, I received a Motion for New Trial filed by Mr. Waite in case 38270. A copy of that Motion is attached hereto as Exhibit N. This was the first notice that I had ever been provided that Mr. Waite sought recusal of Judge Hippe based on any alleged pecuniary interest on his part.

24. On January 7, 1994, the plaintiff's Motion for New Trial came on for hearing before Judge Hippe. I appeared by phone. Mr. Waite was present in person. During the course of oral argument, Judge Hippe declared his intention to assign the hearing and further proceedings to Judge Alfred Kortum. He did not recuse himself, but rather reassigned the case. A copy of his Order of Reassignment is attached hereto as Exhibit O. It was my

opinion and conclusion that Judge Hippe felt that it would be more appropriate for a Judge other than himself to review these newly made allegations of "pecuniary interest." I did not feel such actions were necessary, but I did not resist that action.

25. On February 1, 1994, I attended the hearing on the plaintiff's Motion for New Trial pertaining to the overruling of his Motion to Vacate the Order Nunc Pro Tunc. The matter was argued and submitted to Judge Kortum on that date. Mr. Waite attended that hearing and presented argument. On March 3, 1994, I received a Journal Entry indicating that Judge Kortum had overruled the Motion for New Trial in case 38270. At the same time, I received notice that he had overrruled various motions to vacate dismissals in other cases. A copy of Judge Kortum's Journal Entry of March 1, 1994 in case 38270 is attached hereto as Exhibit P. Thereafter, Mr. Waite made several additional filings of motions and purported discovery documents but he did not file a Notice of Appeal within the time required by Nebraska law.

26. Mr. Waite eventually attempted to appeal the overrulinq of his Motion for New Trial on his motion to vacate by filing a Notice of Appeal on August 15, 1994, which I received on August 19, 1994. A copy of that Notice of Appeal in attached hereto as Exhibit Q.

27. On August 18, 1994, I also received copies of correspondence between Mr. Waite and Judge Kortum, copies of which are attached hereto as Exhibits R and S respectively.

28. On October 3, 1994, I received notice that the Nebraska Court of Appeals had dismissed case 38270 on its own motion. A copy of that Order is attached hereto as Exhibit T. Mr. Waite

sought further review of this order by the Nebraska Supreme Court, however, the Petition for further review was denied on November 30, 1994. A copy of that Order is Attached hereto as Exhibit U. On February 27, 1995, Mr. Waite filed a Motion to Amend Summons Issued April 8, 1991, a Motion to Strike Journal Entry overruling Motion of New Trial and Request for Hearing on Pending Motions, and a Brief in Support of Plaintiff's Motion to Strike Journal Entry overruling Motion for New Trial in the District Court of Scotts Bluff County, Nebraska in Case 38270, copies of which are attached hereto as Exhibits V, W, and X respectively.

29. At the present time, Mr. Waite has three cases which awaiting oral argument before the Nebraska Court of Appeals. These appeals were taken from the Order of Judge Kortum overruling the Motions for New Trial pertaining to the denial of the Motions to Vacate filed by Mr. Waite in cases 38267, 38268 and 38271. Copies of the Petitions or Amended Petitions on file at the time of the dismissals in 1991 as well as the Amended Petition (Complaint) from case 38270 are attached hereto as Exhibits Y, Z, AA and BB respectively. The appeals in case 38267 and 38268 involve damage claims for pain and suffering during Mrs. Waite's lifetime and are appropriately categorized as "survival" actions, the same as, or similar to the allegations of the Amended Complaint filed by Mr. Waite in the instant underlying case (38270). In other words, 38270 is merely redundant to either of the other cases presently pending on appeal.

30. I have had no conversations with Judge Hippe pertaining to Mr. Waite's litigation other than the brief telephone

call of October 28, 1991, previously fully described in paragraph 13 and the brief telephone hearinq of August 9, 1991, detailed in paragraph 10 of this Affidavit. The Auguat 9, 1991, phone call involved the participation of Mark Novotny, an Omaha lawyer representing the other defendants. When Mr. Waite could not be reached, the telophone bearing was rescheduled for open court and the call terminated. I have never discussed the merits of any of Mr. Waite's cases with Judge Hippe or any other Judge. I do not know Judge Hippe personally and my sole previous contact with him was in one or two cases where I appeared on behalf of a different client, the Burlington Northern Railroad.

31. I have not conspired with Judge Hippe to deprive Mr. Waite of any rights. In fact, when I spoke with him on October 28, 1991, it was with a view that he rule regarding the unauthorized practice of law issue which I felt was before the Court. I did suggest the Order Nunc Pro Tunc, or the grounds therein, and I did not seek to obtain it. I immediately gave written notice of the proposed order to Mr. Waite and his attorney, James Brown. As far as I am aware, however, the statements made to me by Judge Hippe were correct. "Regional West Medical Center, Nursing Service" is not a legal entity and I was aware that an affidavit from the appropriate hospital official had been filed earlier. A true copy of that affidavit is attached hereto as Exhibit CC. In addition, the Court may take judicial notice of pleadings and filings in other cases before the Court and I was peersonally familiar with the redundancy involving the other cases filed by Mr. Waite. Accordingly, I believed then, as now, that Judge Hippe's action was entirely appropriate.

32. I have at all time relevant to this matter acted in good failth as an attorney ethically bound to zealously represent my client, Regional West Medical Center, and without any malice or ill will toward Mr. Waite.

34. Glenn Waite's documented history of abuse of process includes the previous filing of a substantially similar lawsuit against the identical defendants involved herein on May 17, 1994, in the United States District Court for th District of Wyoming appearing as Docket 94 CV 129B, a copy of that "Complaint" is attached hereto as Exhibit DD. This defedant was thereafter required to retain local Wyoming counsel, resist plaintiff's premature discovery, file a 12(b) Motion to Dismiss, and draft a brief on issues including obvious lack of personal jurisdiction, before the action was ultimately dismissed by Mr. Waite.

34. Mr. Waite's contintuing endeavor to pursue an underlying cause of action for malpractice belonging to the Estate of Harriet Waite through redundant litigation at the state and federal level, and through actions barred by issue preclusion including res judicata and collateral estoppel, constitute a misuse of judicial procedure as a tool for harrassment resulting in continuing harm to this defendant in the form of unnecesaary litigation expenses, attorney fees, and waste of time.

35. I have personal knowledge of the foregoing facts based upon my representation of Regional West Medical Center throughtout the litigation described above and in the attached documents.

36. Each of the attached Exhibits A through DD are true and accurate copies of tbe genuine original documents described in detail in though the body of this atfidavit.

FURTHER AFFIANT SAYETH NOT.

James A. Snowden

Subscribed and sworn to before this 27 day of March, 1995.

Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GLENN R. WAITE, Plaintiff,	)	No. 8:CV94-365
	)	AFFIDAVIT OF
vs.	)	
	)	GLENN R. WAITE
ROBERT O. HIPPE, JAMES A. SNOWDEN, ROBERT P. CHALOUPKA, and ALYCE MAUPIN, R.N., Defendants.	)	

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

Glenn R. Waite first being duly sworn upon his oath makes this affidavit based on personal knowledge and deposes and states as follows:

1. I am the plaintiff in the above captioned case. I represent myself and no other person or legal entity. I reside in Cheyenne, Laramie County, Wyoming. I am a licensed physician in the States of Wyoming, Colorado, California, and Indiana. I have post-graduate training in preventive medicine, internal medicine, family practice and spinal cord injury medicine. I am Board Certified in Family Practice Medicine.

2. I am the sole natural son of Harriet I. Waite who died intestate on April 17,

1989. She had no debts when she died. I was appointed as personal representative of decedent on January 2, 1991. I have always been the sole and only interested person in the survival action and wrongful death action lawsuits concerning the medical care provided to my mother and never represented any other person other than myself. The relief sought was for my own benefit. Though my mother had other heirs, they never, at any time, requested or relied on me to prosecute any lawsuit or seek relief on their behalf. In support of this, I hereby attach true copies of documents obtained from and certified by the Clerk of the probate Court and mark them as Plaintiff's Exhibit #1.

3. There have been two attorneys whom I have employed to assist me in my duties as personal representative in the probate court. They are Edmund Hollstein and James Slavik. The renunciations of succession, affidavits, and assignments signed by Peter A. Waite, Doris R. Butler, and Beverly E. Sipple were drafted by Mr. Slavik. There have been three attorneys whom I have employed to assist me in prosecuting the medical malpractice lawsuits. They are Alexander Davison, Jim L. Brown and William G. Blake. I have employed Douglas DeLair to prosecute a legal malpractice lawsuit. At no time did my employed attorneys file an appearance in case number 38270.

4. On March 27, 1991, I filed an original lawsuit in this U.S. District Court on the basis of Diversity Jurisdiction. A true copy of the original is attached as Plaintiff's Exhibit #2. When I filed my original complaint I was aware that the federal courts used the "notice" rules of pleadings. The nondiverse parties were dismissed without being served with process and I proceeded against the diverse defendant. I diligently sought the services

of an attorney but was unable to employ an attorney to represent me. I requested that the Court appoint one for me. The Court denied my request for appointment of counsel and ordered me to proceed in the lawsuit and represent myself. A true copy of the "Memorandum and Order" signed by Magistrate Judge Piester is attached as Plaintiff's Exhibit #3. Until on or about July 22, 1991 when I received a brief from Mr. James Snowden, I never knew and was never told by any Judge or any Attorney that it was not appropriate to represent myself in lawsuits I filed and were brought in the name of the personal representative.

5. In April 1991, I filed six lawsuits in the District Court of Scottsbluff County, Nebraska against various defendants most of whom were the nondiverse defendants in the original federal lawsuit filed in this Court. In 1991, the District Court of Scottsbluff County, Nebraska had two regular terms; one from January 1991 to June 1991 and the other from July 1991 to December 1991. At the time of filing these lawsuits I was aware that Nebraska used the "code" rules of pleadings. I was also aware that under Neb. Rev. Stat. section 25-702 the causes involving different defendants cannot be joined unless each cause affects them all and they have a joint or common liability or interest. I was also aware that a survival action and wrongful death action with some of the same material facts were separate causes of action and did not have to be joined together in the same lawsuit. In case number 38267, the cause of action involved medical negligence in the diagnosis and treatment of polymyositis by the defendants with injury to plaintiff's decedent during her lifetime. A true copy of the most recent amended petition is attached hereto as Plaintiff's Exhibit #4. In case number 38268, the cause of action involved medical

negligence in the diagnosis and treatment of central pontine myelinolysis by the defendants with injury to plaintiff's decedent during her lifetime. A true copy of the most recent amended petition is attached hereto as Plaintiff's Exhibit #5. In case number 38269, there were two causes of action. One involved negligence leading to wrongful death. The other involved fraud which contributed to decedent's death. A true copy of the most recent amended petition is attached hereto as Plaintiff's Exhibit #6. In case number 38270, the cause of action involved battery and a common law negligence claim that the defendants administered morphine to plaintiff's decedent against her expressed wishes in violation of her self-determination rights. It was a survival action which the decedent could have prosecuted had she survived. In case number 38271, the cause of action was negligence leading to wrongful death. A true copy of the most recent amended petition is attached hereto as Plaintiff's Exhibit #7. In case number 38279, the cause of action was negligence in the diagnosis and treatment of chronic hyponatremia with injury to plaintiff's decedent during her lifetime and which occurred only in Dawes County, Nebraska. Regional West Medical Center was not named as a defendant in this case. Venue was proper because the defendants resided in Scottsbluff County. The only causes of action which could have been consolidated were the first cause in case 38269 and the cause of action in case number 38271, but cause of action number two remained in case number 38269 and could not be consolidated with case number 38271 under Nebraska law. The other causes of action could not be consolidated because the causes involved different defendants and they did not have a joint or common liability or interest. In October 1991, the only cases appealed to the Nebraska Court of Appeals were cases 38267, 38268, and 38271. Case number 38269 has never been appealed to the Nebraska Court of Appeals either as a single case and as a consolidated case. At the time of appeal case number 38269 was not consolidated with case no. 38271.

6. In case number 38270, filed in the district court of Scottsbluff County, Nebraska, the most recent amended petition was filed on December 9, 1993 and is attached hereto as Plaintiff's Exhibit #8. I sued two defendants. One was Regional West Medical Center also known as West Nebraska General Hospital. A summons was issued on April 8, 1991 and returned on April 15, 1991. The other defendant sued was Nancy Adams, R.N. whose name was unknown at the time the lawsuit was first filed. A summons was issued on September 2, 1994 and returned on September 30, 1994. A true copy is attached hereto as Plaintiff's Exhibit #9. In the first amended complaint, Nancy Adams was designated as "Regional West Medical Center, Nursing Services, Jane Doe, REAL NAME UNKNOWN". In case number 38270, I never, at any time, sued the department of a corporation. On June 11, 1991, Defendant, Regional West Medical Center, filed a special appearance for the purpose of objecting to the jurisdiction of the Court over its person. Prior to June 28, 1991 and at no time since then has defendant, Regional West Medical Center, filed any motions claiming that there was another action pending between the same parties for the same cause. On June 28, 1991 the Court sustained the special appearance of Regional West Medical Center. On July 19, 1991, Regional West Medical Center filed a "Motion to Strike Pleadings and to Dismiss; to take up this motion before others and for an extension of time to object to discovery". Attached to this motion was the "Affidavit

of James A. Snowden". This affidavit stated that Regional West Medical Center was a named defendant in case number 38270. On July 26, 1991, plaintiff, Glenn R. Waite, filed an objection to the motion by Defendant, Regional West Medical Center. I was asking the court to set the matter for a hearing and render a decision. The Court never has, as of this date, set the defendant's motion and plaintiff's objection for a hearing or rendered a decision on the motion and objection. There was absolutely no notice of hearing and absolutely no hearing held in case number 38270 on August 9, 1991. Prior to August 9, 1991, I did not receive notice of any hearing scheduled for August 9, 1991 in case number 38269 and was not a participant in any hearing held August 9, 1991 in any case which I filed. On October 30, 1991, the court without prior notice and without prior hearing to the plaintiff, filed an "order nunc pro tunc". The court did not send the plaintiff any official written signed copy of this "order nunc pro tunc" within 30 days after October 30, 1991. True copies of all the pleadings filed within the Court records between April 8, 1991 and October 30, 1991 along with the Clerk's certification is attached hereto as Plaintiff's Exhibit #10. On October 15, 1993, I filed a motion to vacate the order nunc pro tunc and a motion to annul Defendant's motion to dismiss. Having obtained the affidavit of Colleen Nash, I proceeded solely against the hospital defendant because the unknown defendant (Nancy Adams) had joint liability with the hospital defendant. The motion to annul defendant's motion to dismiss is attached as Plaintiff's Exhibit #11. On October 29, 1993, the court heard these motions and the matters were taken under advisement. At the hearing was the first time I saw documents which confirmed the ex parte communication of Defendant Snowden with Judge Hippe and I immediately made an oral motion to disqualify Judge Hippe based on the ex parte communication. A true copy of the transcript is attached hereto as Plaintiff' Exhibit #12. On November 2, 1993, I filed a written motion to recuse Judge Hippe and a motion for change of Judge or Venue. The Court never has, as of this date, ruled on this motion. On December 7, 1993, I filed a Substitution of Parties. A true copy of this document is attached hereto as Plaintiff's Exhibit #13. On December 9, 1993, I filed an amended petition. Also on December 9, 1993, the Court filed its "memorandum decision". On December 17, 1993, I filed a motion for new trial. On January 5, 1994, I filed a "motion for declaration regarding request that Judge Hippe recuse himself due to ex parte communication" and a "motion to disqualify Judge Hippe due to Pecuniary Interest". A true copy of these motions are attached hereto as Plaintiff's Exhibit #14. The Court never has, as of this date, ruled on these motions. On January 7, 1994, the Court held a brief hearing and Judge Hippe reassigned the case to Judge Kortum. On February 1, 1994, the Court heard plaintiff's motion for new trial. The matter was taken under advisement. On March 1, 1994, the Court overruled plaintiff's motion for new trial. I did not file notice of appeal because the Court had not yet entered any valid final order disposing of all the material issues in the case. On or about March 30, 1994, I filed a motion for hearing on my pending motions. The Court never ruled on this motion. On April 11, 1994, I filed a motion to strike out and explunge. Attached hereto is a true copy and designated as Plaintiff's Exhibit #15. The Court never has, as of this date, ruled on this motion. On April 11, 1994, I filed a motion to vacate memorandum decision entered by disqualified judge. Attached hereto is a true copy and designated as Plaintiff's Exhibit #16. The Court never has, as of this date, ruled on this motion. On or about May 4, 1994, I filed a motion for change of judge or venue in which he sought to disqualify Judge Kortum due to personal knowledge of the subject-matter extrinsic to his official capacity. This motion is hereto attached as Plaintiff's Exhibit #17. On August 3, 1994, I wrote a letter to Judge Kortum requesting a hearing on the pending motions. On August 10, 1994, Judge Kortum sent a letter to Plaintiff indicating that he would not set the pending motions for a hearing, however, Judge Kortum never rendered a decision nor signed an order which was filed in a journal entry indicating that the Court would not hear the pending motions. On August 15, 1994, I filed a notice of appeal to the "letter opinion" of Judge Kortum. The Court of Appeals dismissed the appeal due to lack of jurisdiction because the District Court had not disposed of all the material issues in the case and no valid final order had been rendered. On December 13, 1994, the court ordered that a mandate be spread upon the journal of the Court. A true copy of this Order is attached hereto as Plaintiff's Exhibit #18. On or about February 22, 1995, I filed a motion to amend summmons issued April 8, 1991 and a motion to strike the journal entry overruling plaintiff's motion for new trial. On February 22, 1995, I sent a letter to Judge Kortum requesting that the Court hear my pending motions. On March 2, 1995, Judge Kortum sent me a letter indicating that he would not hear the pending motions. A true copy of this letter is attached hereto as Plaintiff's Exhibit #19.

7. In case number 38270, I never, at any time, received a notice that the

defendants had filed any motion for an Order Nunc Pro Tunc. Furthermore, the defendants never, at any time, filed any motion raising the issue that there was another action pending between the same parties for the same cause. The Court never, at any time, provided me with a notice that a motion for an order nunc pro tunc had been filed and set for hearing. The Court has never, at any time, heard any motion for an order nunc pro tunc. At no time prior to October 30, 1991 when Judge Hippe signed the "order Nunc Pro Tunc" did I receive notice from the defendants or their attorneys or from the Court that James Snowden had asked or Judge Hippe had requested Mr. Snowden to prepare an order nunc pro tunc. The Court never, at any time, prior to October 30, 1991 when Judge Hippe signed the order nunc pro tunc, provided me a notice and hearing on the issues contained within the order.

8. In May 1992 after learning that Mr. James Snowden had possibly had an ex parte communication with Judge Hippe, I corresponded with the Nebraska State Bar Association. True copies of the letters of correspondence with the Nebraska State Bar are attached hereto as Plaintiff's Exhibit #20.

9. On March 29, 1995, I received in the mail the affidavit of James A. Snowden dated March 27, 1995. Attached to that affidavit was Exhibit D dated October 24, 1991. The certificate contained within that Exhibit states that the official court reporter certifies that the transcript is correct and complete and contains all the matters required to be included herein pursuant to the praecipe filed. The face of Exhibit D has case number 38270 as one of the cases and shows that 38269 and 38171 are consolidated. I did not either directly or through my attorneys file a "praecipe" for a transcript or bill of exceptions in case

number 38270 filed in the District Court of Scottsbluff County, Nebraska. Furthermore, cases 38269 and 38271 were not consolidated at the hearing on September 3, 1991 nor have they been consolidated at any time since then. I was present at the hearing held September 3, 1991 and case number 38270 was not heard on September 3, 1991. Exhibit D is not a true and accurate transcript of the proceedings. The true transcript is the one received by my Attorney Alexander Davison on January 13, 1993 and is attached hereto as Plaintiff's Exhibit #21. There were only five cases heard at that hearing. These were separate cases and none had been consolidated one with the other. The cases were 38267, 38268, 38269, 38271, and 38279. The cases were heard together on September 3, 1991 for the convenience of Judge Hippe and Judge Kortum.

10. In November 1992, it came to my attention that there was a possibility that Judge Robert O. Hippe had a pecuniary interest in case number 38270 and the other cases where Regional West Medical Center was named as a defendant. In order to confirm these allegations, I retained the Whelan Detective Agency. On November 18, 1993, the Whelan Detective Agency sent me a letter which confirmed that Mrs. Anne Hippe, wife of Judge Robert Hippe, was indeed employed by Regional West Medical Center during the time Judge Robert O. Hippe was hearing cases 38269, 38270, and 38279 and was a paricipating Judge at the hearing held September 3, 1991 when he heard arguments on cases 38267, 38268, 38269, 38271, and 38279.

11. On May 17, 1994, I filed case number 94CV129B in the U.S. District Court for the District of Wyoming in which James A. Snowden was named as a defendant. Mr. Snowden never filed any answer to the original complaint or the amended complaint. On June 15, 1994, I provided Mr. Snowden's

attorney with self-executing discovery pursuant to local rule and Fed. R. Civ. P. 26 (a) (1). On June 20, 1994, Mr. Snowden's Attorney filed a "motion to stay discovery proceedings". On June 21, 1994, I filed an amended petition. On June 30, 1994, defendant Snowden filed another motion to dismiss on the basis that the court did not have jurisdiction over his person. On July 1, 1994, the Court granted defendant Snowden's motion to stay discovery proceedings. Attached hereto is a true copy of the Court's order as Plaintiff's Exhibit #22. Prior to the Court's order denying discovery, defendant Snowden never provided plaintiff with discovery information going to jurisdiction over his person and particularly facts within Mr. Snowden's possession. At the time, I filed my case in the U.S. District Court for the District of Wyoming, I had a good faith belief that the Court had jurisdiction over both the subject-matter and over the person of James Snowden. The Court denied me discovery on these issues and therefore I filed, on June 30, 1994, a Motion to transfer plaintiff's action pursuant to section 1404(a) & 1406(a) of title 28 U.S.C. On July 11, 1994, defendant Snowden filed a "Brief of James A. Snowden and Alyce Maupin opposing Plaintiff's Motion to Transfer". Attached to that brief was a copy of the local rule 83.10 of the U. S. District Court for the District of Nebraska. Defendant Snowden accused me of trying to circumvent the Nebraska Court rules and depriving the defendants of the intervention of the Nebraska federal magistrate in the pleading process. A true copy of this brief is attached as Plaintiff's Exhibit #23. On July 11, 1994, the plaintiff filed a "Notice of Dismissal Pursuant to Fed. R. Civ. P. 41 (A)(1)(i)". Attached hereto is a true copy of that motion and is designated as

Plaintiff's Exhibit #24. On November 23, 1994, the U.S. District Judge ordered that the Plaintiff's Complaint be dismissed without prejudice. A true certified copy of this order is attached hereto as Plaintiff's Exhibit #25.

FURTHER AFFIANT SAYETH NOT.

Glenn R. Waite

Subscribed and sworn to before me this the 10 day of April 1995.

Notary Public

IN THE DISTRICT COURT
OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff, vs. REGIONAL WEST MEDICAL CENTER, and NURSING SERVICE, Defendants.	)	NO. 38270 MOTION TO STRIKE JOURNAL ENTRY OVERRULING MOTION FOR NEW TRIAL AND REQUEST FOR HEARING ON PENDING MOTIONS

COMES NOW, Plaintiff, Glenn R. Waite, individually, and respectively requests this court to strike the journal entry overruling plaintiff's motion for new trial and requests a hearing on pending motions. Plaitniff makes this motion based on the following grounds:

(1) A motion for new trial directed to a nonfinal order is a nullity, as is any ruling on such a motion.

(2) the "memorandum decision" rendered December 9, 1993 is a nonfinal order because (1) it is ambiguous, and (2) it did not dispose with all the material issues in the case.

EXHIBIT
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Plaintiff states that on the 13th of December 1994, this court spread upon its joural a certain mandate received from the Supreme Court. On September 30, 1994, the Nebraska Court of Appeals dismissed plaintiff's appeal because of lack of jurisdiction because the appeal was premature. The Court of Appeals decision was based on tis review of the Supplemental Transcript filed September 22, 1994. This Supplemental Transcript certified that the court records did not contain any order for hearing in regard to the Motion to Strike and To Dismiss filed by the Defendants on July 19, 1991, nor did the record caontain any Journal Entry indicating that the court heard this Motion. Furthermore, the record did not contain any Motion filed by the Defendants requesting any Order Nunc Pro Tunc nor did the record contain any journal entry indicating that the Court heard such a motion.

Plaintiff attaches and incorporates herein a true copy of the order by the Court of Appeals on September 30, 1994.

Plaintiff atttaches and incorporates herein a true copy of the Supplemental Transcript filed September 22, 1994 which he obtained from the Clerk of the Supreme Court.

Plaintiff requests this court to set this motion for a hearing in accordance with "due process" under Nebraska law and the 14th amendment to the U.S. Constitution.

Plaintiff indicates that he has filed a brief to support his motions.

Dated this the 22 day of February 1995.

Glenn R. Waite
Plaintiff
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing MOTION & REQUEST to be served upon James A. Snowden, 1000 NBC Center, Lincoln, NE 68508 by regular U. S. Mail this the 22 day of February 1995.

Glenn R. Waite

NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O. BOX 98910
2413 State Capitol Building
Lincoln, Nebraska 68509
(402) 471-3731

September 30, 1994

Glenn R. Waite
1202 West 28th Street
Cheyenne, WY 82001

IN CASE OF: A-94-0765, Waite v. Regional West Medical Center

Misc. Submissions to Court - Jurisdiction **filed** 09/22/94 **has been reviewed by the court and the following order entered:**

Appeal dismissed. See Rule 7A(2).

Respectively,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

IN THE DISTRICT COURT
OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE,) SUPPLEMENTAL
Personal Representative) TRANSCRIPT
of Harriet I. Waite,) Case No. 38270
Deceased,)
Plaintiff,) Supreme Court
vs.) No. A-94-0765
REGIONAL WEST MEDICAL)
CENTER,)
NURSING SERVICE,)
Defendants.)

INDEX

CERTIFICATION.............................-1

DEBORAH MAY GARDNER
CLERK OF THE DISTRICT COURT
SCOTTS BLUFF COUNTY GERING, NE 69341
P.O. BOX 47 (308) 436-6641

September 20, 1994

Glenn R. Waite,)
Personal Representative) Case No. 38270
of Harriet I. Waite,)
Deceased,) CERTIFICATION
Plaintiff,)
vs.)
Regional West Medical)
Center,)
Nursing Service,)
Defendants.)

The record herein does not contain any ORDER FOR HEARING in regard to the Motion to Strike and Dismiss filed by Defendants on July 19, 1991; nor does it contain any JOURNAL ENTRY indicating that the court heard this Motion.

The record herein does not contain any MOTION filed by the Defendants requesting any Order Nunc Pro Tunc; nor does the record contain any JOURNAL ENTRY indicating that the court heard such a motion.

SEAL

Deborah May Gardner
Clerk of the District Court

filed Sept 20 1994
Deborah May Gardner

STATE OF NEBRASKA) ss.
COUNTY OF SCOTTS BLUFF)

IN THE DISTRICT COURT OF
SCOTTS BLUFF COUNTY, NEBRASKA

I, Deborah May Gardner, Clerk of the District Court, within and for the County aforesaid, do certify that the foregoing is a full, true and correct copy of the pleading in our Case #38270 entitled: Glenn R. Waite, Personal Representative of Harriet I. Waite, Deceased, Plaintiff, vs. Regional West Medical Center, Nursing Service, Defendants.

as the same appears on file within entitled case and now in my charge remaining as clerk aforesaid;
IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my Official Seal the 20th day of September, 1994

SEAL

Clerk District Court

CASE NO. 38270
IN THE DISTRICT COURT
OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE,)
Personal Representative)
of Harriet I. Waite,)
Deceased,)
Plaintiff,) JOURNAL ENTRY
vs.)
REGIONAL WEST MEDICAL)
CENTER,)
NURSING SERVICE,)
Defendants.)
)

Now on this 28th day of June, 1991 the Special Appearance filed by the Defendant herein cam on for consideration by the Court. The hearing was held by telephone conference with Glenn R. Waite appearing on behalf of himself and Rhoda R. Flower appearing for Defendant.

The court, having reviewed the Affidavit of Alyce Maupin and considering the comments of Plaintiff and Defendant's counsel, finds that the Defendant's Special Appearance should be sustained.

IT IS SO ORDERED.

BY THE COURT,

Robert O. Hippe
District Judge

EXHIBIT
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IN THE DISTRICT COURT
OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE,)
Personal Representative)
of Harriet I. Waite,)
Deceased,) Case No. 38270
Plaintiff,)
vs.) MEMORANDUM
REGIONAL WEST MEDICAL) DECISION
CENTER,)
NURSING SERVICE,)
Defendants.)

On April 8, 1991, the plaintiff filed five lawsuits in this court. On April 11, 1991, a sixth suit was filed. All of those cases were filed by Glenn R. Waite, Personal Representative of Harriet 1. Waite, his mother, Deceased, as plaintiff, All of the cases, sought to recover damages for next of kin, and all of the cases complained of medical treatment furnished to Harriet I. Waite at sometime between 1986 and April 17. 1989, when Harriet I. Waite died.

In all the cases, various motions were filed by defendants and the plaintiff made amendments to the original complaint for damages. The cases were assigned different case numbers, were assigned to different judges and referrrd to different incidents of medical treatment, with some duplication between the cases.

The first case was assigned number 38287, and was assigned to Judge Kortum. The person summoned in that case was W. Scott Carpenter, M.D. who is a doctor practicing internal medicine with the group Scottsbluff Internal Medicine Group, P.C. in Scottsbluff, Nebraska. This case also included Scottsbluff Internal Medicine

EXHIBIT
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Group, and included Regional West Medical Center, the owner and operator of a local acute care hospital.

The second case was number 38268, and it was also assigned to Judge Kortum. Persons sued in that case were W. Soott Carpenter, M.D., Armando J. Mangana, M.D., another member of the internal medicine group, William M. Packard, M.D., a third member of the internal medicine group, Regional West Medical Center, and Terry Himes. D.O., a localneurologist who practices individually.

The third case filed was number 38269. This case was aasigned to Judge Hippe. Persons sued were W. Scott Carpenter, M.D. and Regional West Medical Center.

The fourth case filed was number 38270, this case. It was assigned to Judge Hippe, and the defendant sued was Regional West Medical Center, Nursing Service.

The fifth case filed was number 38271 and it was assigned to Judge Kortum, The persons sued were Regional West Medical Center, W. Scott Carpenter, M.D., Terry Himes, D.O., Janet L. Haick, R.N., apparently an employee of the hospital, Judy Bowlin, L.P.N., another employee of the hospital, and Donna Rusen, R.N., anothor employee of the hospital. Also included in this case was Larry O'Holleran, M.D., a local general surgeon.

The six and last case filed 3 days later was number 38279, and was assigned to Judge Hippe. The defendants in that case were W. Scott Carpenter, M.D., and Scottsbluff Internal Medicine Group, P.C.

All of the cases had various amendments made to them and included complaints about actions of people other than the summoned detendants. However, none of the cases had any additional defendants summoned other than those that are listed above.

In Case No. 38270, which had Regional West Medical Center, Nursing Service as a defendant, on May 17, 1991, the Court rendered an order allowing the withdrawal of a defense motion for nonresident cost bond and a special appearance in order for the defense to evaluate an amended petition which had been filed. Then a special appearance was filed on June 11, 1991. At a hearing on June 28, 1991, that special appearance was sustained on the basis of a defense affidavit that Regional West Medical Center Nursing Service is not a legal entity, but is a department within the Regional West Medical Center.

On July 19, 1991, the defense filed a motion to strike plendings and to dismiss in all cases. The defense claim in these motions was that the plaintiff was practicing law without a license and should be dimissed on account of that.

On August 8, 1991, all cases had a defense motion for summary judgment filed, and served, with the exception of Case No. 38270; which was the case that had the special appearence sustained on the basis that no legal defendant had been sued. Counsel Mark Novotny and James Snowden, representing various defendants phoned and requested that the defense motions be set for hearing. An order was made by both judges in some of the cases setting "all motions... along with all other related pending cases" for hearing on September 3, 1991. That order was dated August 9, 1991.

On September 3, 1991, a consolidated hearing was held in all of the cases except the one which the special appearance had been sustained, Case No.

38270. The plaintiff appeared with counsel Alexander Davison, evidence was adduced by both parties in all five cases, Nos. 38267. 38368, 38269. 3B271 and 38279, and the defense motions for summary judgment and to strike pleadings and to dismiss were submitted.

On September 5. 1991, there was an order made for summary judgment of dismissal against the plaintiff's case in all cases except number 38270. In three of those cases, Nos. 38267, 38268, and 38271, the dismissal was appealed to the Nebraska Court of Appeals, and the judgment was affirmed by that court on October 27, 1992. The opinion of the Court of Appeals may be found at 1 N.C.A. 2014. The reason for affirming the judgment of dismissal was that the record showed that the plaintiff was engaged in the unauthorized practice of law and that dismissal of the plaintiff's case was an appropriate remady for that violation.

In Case No. 38270, defense counsel Snowden noticed nothing had been done since June 28. 1991, when a special appearance had been sustained. On October 28, 1991, (after 3 cases had been appealed and the other 2 had become final), he called the clerk to find out why. He was transferred to Judge Hippe and was told to prepare an order nunc pro tunc to include a dismissal of the case. Nothing had transpired in that case since the June ruling that the defendent sued was not a legal entity. That was done, signed, and filed on October 30,1991,and sent to the plaintiff and his attorney who had taken the appeals.

Now, in all the cases except Case No. 38269, the plaintiff has filed pro se motions to set aside and vacate the dismissals. In amended petitions, the plaintiff now says he is Glenn R. Waite. Amended petitions in each case seem to involve the same matters that were decided in 1991, except now the plaintiff says all heirs of Harriet I. Waite have renounced any inheritance interest, that there are no creditors in the estate, that there are no assets other than there cases of action, and that Glenn R. Waite is the only person interested in the estate or these cases. The renunciations were dated in September and October, 1993.

If the Court allows the plaintiff to reopen these cases and pursue his claim, the Court may be countenancing the unauthorized practice of law that was condemned by the opinion of the Court of Appeals and was ruled improper by the summary judgments of dismissal done this Court. On the other hand, if the Court allows the plaintiff to be a different person and sue individually in these cases by reopening them, the Court will allow a stranger to the suit into a case which has rendered a final judgment. In either event, the Plaintiff has no case. If he wishes to pursue a case individually as himself, such a case will have to be properly filed and litigated. If the plaintiff is still the plaintiff who lost this case, he can proceed no further because to allow it would further condone his unauthorized practice of law. In either event, the efforts to reopen this case must fail.

The cases were dismissed on September 5, 1991, because of what the plaintiff had done before that time, to.wit. engaged in the unauthorized practice of law. Whatever has changed since September 5, 1991, whether the interests in the estate have changed or not, makes no difference. The plaintiff did have counsel at the motion for summary judgment hearings and for the appeals. Thus, he was not engaging in unauthorized practice of law at those times. However, the cases were dismissed because of what he had already done. If the cases are enlivened now, for whatever reason, the unauthorized practice would be of no consequence, and the plaintiff would get through the back door what he couldn't through the front door.

The Court of Appeals discussed the evils that are the reason for the rule against unauthorized practice of law in Nebraska. To allow this plaintiff to continue to file motions, create litigation, vex litigants, etc., will compound those evils.

There is an additional consideration in this case. The reason for sustaining the special appearance on June 28, 1993, was given in the affdavit of Alyce Maupin that was relied upon for the decision - the defendant was a department of a corporation.

The department of a corporation obviously does not have capacity to sue or be sued. It is not a natural or artificial person recognized by law. Thus, this case had no legal defendant and still doesn't. In reality, it is not a case, and never will be because cases or controversies must have a claimant and an adverse party. That's why no hearings were set in this case after June 28, 1993, even though various papers were filed.

There is disagreement whether a decision sustaining a special appearance such as this is a final order, or whether the decision must be accompanied by a dismissal. 4 Am. Jur. 2nd "Appeal and Error" 81 says that the courts are not unanimous on the point. It generally depends on whether the defect can be corrected, such as ammending the summons or an affidavit in support of publication. In this case, it makes no difference because the dismissal was done on October 30, 1991. The court agrees that the October 30, 1991, order's reference to other cases pending is surplusage. If a dismissal had been included in the journal dated June 28, 1991, there would have been no doubt, but the fact that it was done later makes the point moot because the dismissal is final- whether it is viewed as occurring on June 28 or on October 30.

Therefore, there is substantial doubt whether the court can make any ruling in this case or not. Any way you look at it, there is no detendant in the case. Without a real case, with real parties,substantial jurisdictional questions exist about whether any judge could make valid judgments and orders in this case at any time after June 28, 1991.

IT IS THEREFORE ADJUDGED that this case is final, the plaintiff may not proceed in this case or profit from it because to allow that would further condone his unauthorized practice of law.

IT IS THEREFORE ORDERED that the motions requesting further orders are all denied.

Entered and rendered this 9th day of December. 1993.

By the Court.

Robert O. Hippe
District Judge

cc: Glenn R. Waite
William Tannehill

KNUSDEN, BERKHEIMER, RICHARDSON & ENDACOTT
ATTORNEYS AT LAW
1000 NBC CENTER
LINCOLN, NEBRASKA 68508

October 28, 1991

The Honorable Robrt Hippe
Scotts Bluff County District Court
1725 Tenth Street
Gering, NE 69341

RE: Glenn R. Waite v. Regional West Medical Center, Nursing Service
Case No. 38270

Dear Judge Hippe:

In accordance with our recent telephone conversation I am enclosing herewith an Order Nunc Pro Tunc which supplements and clarifies the Court's ruling on the special appearance dated June 28, 1991. I trust that this clarifies the status of the case for all concerned.

Very truly yours,

JAMES A. SNOWDEN
For the Firm

IN THE DISTRICT COURT
OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE,)
Personal Representative)
of Harriet I. Waite,)
Deceased,) NO. 38270
Plaintiff,)
vs.) AMENDED COMPLAINT
REGIONAL WEST MEDICAL CENTER,)
NURSING SERVICE,) JURY TRIAL DEMANDED
Defendants.)

NOW COMES, Plaintiff, Glenn R. Waite, to amend his complaint and alleges a cause of action as follows:

1. Plaintiff, Glenn R. Waite is the personal representative of the estate of Harriet I. Waite and resides at 1820 Drew Avenue, Mountain View, California.

2. Harriet I. Waite, deceased, shall be referred to as "subject" herein. Subject resided at Hay Springs, Nebraska, County of Sheridan, State of Nebraska.

3. Defendant, Regional West Medical Center, Nursing Services, is an acute care general hospital and is licensed under the laws of the State of Nebraska and is accredited by the Joint commission on Accreditation of Health Care Organizations. their offices are at 4009 Avenue B., Scottsbluff, Nebraska.

4. On April 14, 1989, Defendant, Regional West Medical Center, Nursing Services, REAL NAME UNKNOWN, (medication record signed by Nancy Adams ad Connie Mount) administered a continuous morphine infusion to subject knowing the subject had refused the medication. This represented assult and battery.

5. The Defendant, Regional West Medical Center, failed to supervise the quality of care provided to subject representing corporate liability.

6. Defendant, Regional West Medical Center, Nursing Services, acted without concern for subject's safety and against the Nursing profession's code of ethics.

WHEREFORE, Plaintiff prays for judgment against the defendants as follows:

1. General damages for pain and suffering and mental anguish to be determined by this court.

2. Special damages for malicious acts. Demand is made for $200,000.

3. Costs and such other relief as this court may deem proper. Interest is demanded

and is to be calculated from April 14, 1989 and onward until judgment by this court.

4. Demand is made for a jury to hear this case.

Glenn R. Waite, plaintiff

Executed on May 14, 1991.

EXHIBIT
BB

IN THE DISTRICT COURT
OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Personal Representative of Harriet I. Waite, Deceased, Plaintiff, vs. REGIONAL WEST MEDICAL CENTER, NURSING SERVICE, Defendants.	)	NO. 38270 SPECIAL APPEARANCE

Defendant Regional West Medical Center hereby enters a special appearance for the purpose of objecting to the jurisdiction of the Court over its person.

REGIONAL WEST MEDICAL CENTER,
Defendant,

By
Robert P. Chaloupka, NBSA #10653, Van Steenberg, Chaloupka, Mulin, Holyoke, Pahlke, Snith, Snyder, and Hofmeister, P.C.
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